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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 333.

SYLVESTER H. KNEELAND, APPELLANT,

vs.

LAWRENCE BROTHERS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED FEBRUARY 28, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 8, 1891.

1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, and the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

THE CENTRAL TRUST COMPANY OF NEW YORK, JAMES M. QUIGLEY, *et al.*
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS Railroad Company of Ohio, Indiana, and Illinois; The Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois; The Frankfort and State Line Railroad Company; The Farmers' Loan and Trust Company, Thomas A. Hendricks, and Grenville D. Braman. — Chancery. No. 7815.

Consolidated.

EDWIN F. LEONARD
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS Railroad Company of Ohio, Indiana, and Illinois; The Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois; The Frankfort and State Line Railroad Company; The Farmers' Loan and Trust Company, Thomas A. Hendricks, and Grenville D. Braman. — Chancery. No. 7814.

In the matter of the claim of Lawrence Brothers & Company.

Be it remembered that heretofore, to wit, at the May term of said court, on the 17th day of June, 1884, before the Honorable William A. Woods, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by Butler, Stillman, and Hubbard and Baker, Hord and Hendricks, its solicitors, and files its bill of complaint herein in the words following, to wit:

2 To the judges of the circuit court of the United States for the trict of Indiana, sitting in equity:

The Central Trust Company of New York, a corporation created by and existing under the laws of the State of New York, brings this its bill of complaint against The Toledo, Cincinnati & St. Louis Railroad Company, a corporation created by and existing under

the laws of the States of Indiana and Illinois; The Toledo, Cincinnati & St. Louis Railroad Company, a corporation created by and existing under the laws of the States of Ohio, Indiana, and Illinois; The Frankfort & State Line Railroad Company, a corporation created by and existing under the laws of the State of Indiana; Thomas A. Hendricks, a resident and citizen of the State of Indiana, and Grenville D. Braman, a resident and citizen of the State of Massachusetts; and thereupon your orator complains and says:

I.

That heretofore, to wit, on or about the 23rd day of July, 1881, the defendant The Toledo, Cincinnati & St. Louis Railroad Company, a corporation created by and existing under the laws of the States of Indiana and Illinois, was the owner of and engaged in construct-
3 ing and completing a line of railway from the city of Kokomo, Indiana, to the city of East St. Louis, Illinois; and on said last-mentioned day, in pursuance of a resolution to that end duly adopted by the board of directors of said corporation, which resolution was thereafter and before the execution of the bonds and indenture of mortgage hereinafter mentioned duly ratified by the vote of holders of more than two-thirds in amount of the capital stock of said corporation at a meeting duly called and held on said 23rd day of July, 1881, the said The Toledo, Cincinnati & St. Louis Railroad Company did execute, by its president and secretary and under its corporate seal, its three thousand bonds for the sum of one thousand dollars each, dated on said 23rd day of July, 1881, payable in gold coin of the United States on the 1st day of July, 1921, with interest at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July in each and every year, in gold coin, at the city of New York or in London, England, each of said bonds having interest warrants or coupons for thirty dollars each thereto attached for payment of interest as afore-
4 said, and said Toledo, Cincinnati & St. Louis Railroad Company issued and sold or caused to be sold a large number, to wit, two thousand nine hundred and thirty, of said bonds, with said interest warrants or coupons attached, all of which bonds were, before the same were issued, duly certified by your orator and the defendant, Thomas A. Hendricks, trustees, and said bonds are now in the hands of a large number of persons as owners and holders thereof, and with the proceeds of sale of said bonds the said Toledo, Cincinnati & St. Louis Railroad Company did locate, construct, and equip the line of railway hereinafter described and did complete and improve the same.

Your orator further shows that, as it is informed and believes, a portion of said line of railway extending from Kokomo to Frankfort, Indiana, formerly known as the Frankfort & Kokomo railroad, had been acquired by said Toledo, Cincinnati & St. Louis Railroad Company, subject to the lien of a certain mortgage securing bonds of said Frankfort & Kokomo Railroad Company; that on said 23rd day of July, 1881, there were outstanding two hundred of said last-

mentioned bonds for the sum of $1,000 each, with accruing
5 interest, all bearing date on the 1st day of January, 1879; that pursuant to the terms of the deed of trust and mortgage hereinafter described two hundred of the aforesaid bonds of the Toledo, Cincinnati & St. Louis Railroad Company, with coupons attached, were issued and delivered to your orator and said defendant, Hendricks, trustees, to be retained by them and to be delivered in such *such* sums as might from time to time be required, at par value, to such persons as should present for exchange at par value said bonds of the Frankfort & Kokomo Railroad Company; that the said trustees have so delivered one hundred and twenty-four of said bonds of the Toledo, Cincinnati & St. Louis Railroad Company, all duly certified by said trustees, under the provisions of said mortgage hereinafter described, in exchange for one hundred and twenty-four of said bonds of said Frankfort & Kokomo Railroad Company, in accordance with the terms and provisions of the deed of trust and mortgage hereinafter described, and that the same, with coupons attached, are also in the hands of divers persons as owners and holders thereof.

2. Your orator further shows that, in order to secure the
6 payment of the principal and interest of said issue of bonds as the same should mature, the said Toledo, Cincinnati & St. Louis Railroad Company did, on or about said 23rd day of July, 1881, in pursuance of the further provision of said resolution, execute and deliver to your orator and the defendant Hendricks (hereinafter styled "the trustees") a certain deed or indenture of trust and mortgage, which was duly recorded in the several counties in and through which the said railway was situated and extended, to wit: In the county of Howard, Indiana, on August 1, 1881; in the county of Clinton, Indiana, on August 2, 1881; in the counties of Tippecanoe, Montgomery, and Parke, Indiana, on August 3, 1881; in the counties of Fountain, Indiana, and Vermillion, Illinois, on August 4, 1881, in the counties of Vermillion, Indiana, and Edgar, Illinois, on August 5, 1881; in the county of Coles, Illinois, on August 6, 1881; in the counties of Douglas, Shelby, and Montgomery, Illinois, on August 8, 1881; in the county of Madison, Illinois, on August 9, 1881; in the county of St. Clair, Illinois, on August 10, 1881; in the counties of Fayette and Bond, Illinois, on August 11, 1881, and in the county of Cumberland,
7 Illinois, on August 12, 1881; and thereby it did bargain, grant, sell, convey, and confirm unto your orator and said defendant, Hendricks, their heirs and successor or successors forever, in trust, all and singular the line of railroad of said Toledo, Cincinnati & St. Louis Railroad Company, as the same was then or should thereafter be constructed between a connection with the Toledo, Delphos & Burlington railroad, in the city of Kokomo, Howard county, State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery, Fountain, Parke, and Vermillion, in the State of Indiana, and the counties of Vermillion, Edgar, Douglas, Coles, Cumberland, Shelby, Fayette, Bond, Madison, and St. Clair, in the State of Illinois, to the city of East St.

Louis, in St. Clair county, Illinois, being about two hundred and seventy miles in length, together with all and singular the right of way, road-bed made or to be made, its track laid or to be laid, between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, machine shops, buildings, erections in any way then owned or
8 which should thereafter be acquired or then appertaining or which should thereafter appertain unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or which should be thereafter at any time held, owned, or acquired by the said Toledo, Cincinnati & St. Louis Railroad Company for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights then or which should be thereafter owned by said last-mentioned railroad company in connection with its line of railroad aforesaid between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenues to be received or derived therefrom, and conveying no other property; to have and to hold the said granted premises unto said trustees, their heirs and successor or successors forever, in trust, nevertheless, and for the uses and purposes in said indenture expressed, which will more fully and at large appear by reference to the original thereof,
9 and your orator craves leave to produce and refer to said original on the hearing of this cause.

3. Your orator further shows that in and by said mortgage or deed of trust it was, among other things, provided, and the said Toledo, Cincinnati and St. Louis Railroad Company did therein covenant and agree, that if the interest due on any of said bonds should not be paid by the said last-mentioned railroad company when the same should become due and should remain in arrears for six months after it had been actually demanded at the place where the same was payable, as specified in said coupons, or in case the principal of said bonds or any of them should not be paid at their maturity, then it should be lawful for the trustees or their successor or successors to forthwith demand, enter, take, and maintain possession of all and singular the railroad premises and franchises thereby conveyed, and as the attorney-in-fact or agent of said last-mentioned railroad company, by themselves and agents or substitutes duly constituted, have, use, manage, operate, and enjoy the same and
10 each and every part thereof to as full an extent as the said railroad company might lawfully do, and should make from time to time all needful repairs, alterations, and additions thereto and receive all the tolls, income, and revenue thereof; and after deducting the expense of such use, operation, reasonable repairs, alterations, and additions, and the cost and charges of taking such possession and a fair compensation for the services of such trustees for such taking possession and management while in possession, the said trustees or their successor for the time being should apply the remaining income and revenue arising from the use of said mortgaged property and coming to their hands to the payment of interest in default

and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the residue upon the principal of said then outstanding bonds.

And your orator further shows that it was also provided in said mortgage or deed of trust that if a six months' default should occur either in the payment of principal or interest of any of the
11 bonds thereby secured after such actual demand as aforesaid, then it should be lawful for the said trustees or the trustee for the time being, with or without entry as aforesaid, to cause all and singular the said premises, railway, and appurtenances, equipment, and franchises thereby conveyed to be sold as an entirety at public auction to the highest and best bidder at the city of Frankfort, Indiana, after giving at least sixty days' notice of the time, place, and terms of sale by advertisement in a newspaper of general circulation in the city of Frankfort and like advertisement in a newspaper of general circulation in the city of New York, and that on such sale the said trustees or the trustees or trustee for the time being should make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee simple, conveying the said railroad property and franchises so sold, which conveyance should be a perpetual bar, both in law and equity, against said last-mentioned railroad company, its successors and assigns, and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises and franchises or any part thereof, and that said trustees, after de-
12 ducting from the proceeds of sale the costs and expenses thereof and a reasonable compensation to said trustees and their attorneys and agents for services in connection therewith, should apply so much of the proceeds as might be necessary to the ratable payment of principal, and then the accrued interest of all the said bonds, whether the said principal should then be due or not; and if any proceeds of such sale should remain in their hands after the full payment of the principal and accrued interest of all said bonds, then they should render and pay over the same to said last-mentioned railroad company or its successors or assigns.

And your orator further shows that it was provided in said mortgage or deed of trust and the said last-mentioned railroad company did therein and thereby expressly covenant and agree that it would, in case of default in the payment by it either of the principal or interest of any of its bonds thereby secured, forthwith, upon demand of said trustees or of the trustee or trustees for the time being, surrender the full and peaceable possession of all and
13 singular the premises thereby conveyed or intended so to be, including all the real and personal property as was thereby mortgaged by it, acquired subsequent to the date of the said mortgage, for use in connection with the said line of railroad between said points, and would also surrender all books of account, records, and papers used by it in and about the operations thereof.

4. Your orator further shows that at the time of the execution and delivery of the said mortgage or deed of trust the railroad of the said Toledo, Cincinnati & St. Louis Railroad Company extended

and still extends through the county of Montgomery, in the State of Illinois, in addition to the counties named in the said mortgage, but that the name of said county of Montgomery, Illinois, was inadvertently omitted from the description of said railroad contained in said mortgage or deed or trust, and that theretofore and on or about the 17th day of August, 1881, the said Toledo, Cincinnati & St. Louis Railroad Company, in order to secure the payment of the principal and interest of the said issue of bonds and in order to correct
14 the said error in the description of said railroad in said mortgage, made, executed, and delivered to said trustees a certain instrument in writing, bearing date on said last-mentioned day, wherein and whereby the said railroad company did bargain, sell, convey, and confirm unto said trustees, their heirs, successor or successors, and assigns forever, in trust and for the uses and trusts created by said mortgage or deed of trust, all and singular that part of the railroad of the said Toledo, Cincinnati & St. Louis Railroad Company situated in and extending through the county of Montgomery, in the State of Illinois, together with all and singular the right of way, road-bed, made or to be made, its track, laid or to be laid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, machine shops, buildings, erections in any way then owned or to be thereafter acquired by the party of the first part in connection with or then or thereafter appertaining unto that portion of its railroad lying in said county, together with all machinery, supplies, and fixtures then or at any time thereafter held, owned, or acquired by said party of the first part for use or connection with the
15 said part of its said railroad, with the depot grounds, yards, turnouts, sheds, machine shops then or hereafter owned by the said party of the first part in connection with the said portion of its railroad, together with all and singular the powers and franchises thereto belonging and the receipts and revenues to be received or derived therefrom; to have and to hold said property, rights, franchises, easements, and premises hereby conveyed and intended to be conveyed unto said parties of the second part, their heirs, successor or successors, and assigns, in trust for the owners and holders of the said bonds issued and to be issued as aforesaid, upon the same and like conditions and with the same and like powers to those which are set forth in the said deed of trust or mortgage dated the 23rd of July, 1881.

That said instrument called a supplemental mortgage was duly recorded in said county of Montgomery, Illinois, on the 13th day of October, 1881, and your orator craves leave to produce and refer to the original of said last-mentioned instrument on the hearing of this cause.

5. Your orator shows that as to so much of said line of railroad as lies between the city of Frankfort, in the county of
16 Clinton, State of Indiana, and the line dividing the States of Indiana and Illinois, extending southwestwardly from said city of Frankfort to a point on said State line near the town of Eugene, in the State of Illinois, being a distance of about sixty miles,

the said mortgage hereinbefore first above described creates an equitable lien only and is not a legal mortgage thereon; that the legal title to said sixty miles of road was at the date of said mortgage and still is vested in the Frankfort and State Line Railroad Company, which is a corporation created by and existing under the laws of the State of Indiana.

That before said sixty miles of railroad of said last-named company or any part thereof *was* built, to wit, the 31st day of August, 1880, said Frankfort & State Line Railroad Company and a certain company known as the Western Construction Company entered into a contract in writing whereby, among other things, it was mutually agreed between them in substance and effect as follows, viz.: That said construction company should build the railroad of said railroad company between the points aforesaid, being the sixty miles of road aforesaid, and that in consideration thereof said railroad company should make, execute, and deliver to
17 said construction company its corporate bonds, secured by mortgage on its said line of railroad, to an amount equal to ten thousand dollars for each mile of road so to be constructed, said mortgage bonds to bear interest at the rate of seven per centum per annum and to be a first lien upon the railroad and other property of said railroad company, and also that it should deliver to said construction company paid-up certificates for all its, said railroad company's, capital stock, to wit, — shares of — each, amounting in all at its par value to two million dollars, provided that said construction company should pay and deliver therefrom to third parties such portions or shares thereof as should be due to such third parties upon subscription or for tax or local aid.

That pursuant to said agreement said construction company built said line of railroad and received from said railroad company certificates for — paid-up shares of said capital stock, amounting at par value to eighteen hundred thousand dollars. The remaining two hundred thousand dollars of said capital stock was retained by said Frankfort & State Line Railroad Company out of which to satisfy said claims of third parties for subscriptions or for tax or
18 local aid. The exact amount necessary for such purpose is not known and cannot be ascertained until certain taxes or local aids are collected, but your orator is advised that the whole of said $200,000 of stock so retained will not be needed for that purpose, but that a considerable amount thereof will remain to be turned over pursuant to the terms of said agreement.

From the first and during all the time of the construction of said sixty miles of railroad it was the purpose and intention of the promoters of said Frankfort & State Line Railroad Company and of said railroad company itself and of all parties interested therein that said sixty miles or thereabout of railroad should form a part of one continuous line of railroad extending from said city of Kokomo to said city of East St. Louis, and that said railroad company should become a constituent part of said Toledo, Cincinnati & St. Louis Railroad Company (of Indiana and Illinois).

The bonds and mortgage provided for in said agreement were

never, in fact, made or executed, nor did said construction company ever request or demand that the same should be made or
19 executed. On the contrary, said Western Construction Company, having like contracts with said Toledo, Cincinnati & St. Louis Railroad Company for the construction of the other portions of said line from Kokomo to East St. Louis, procured said last-named company, with the acquiescence and consent of said Frankfort & State Line Railroad Company, to make the bonds and mortgage hereinabove first described, and with like acquiescence and consent of said last-named company received an equivalent amount of the bonds herein first above described in lieu of the mortgage bonds of the Frankfort & State Line Railroad Company provided for in said agreement.

Said railroad of the Frankfort & State Line Railroad Company, to wit, the sixty miles of road above described, was, in fact, built and paid for in chief part with moneys derived by said construction company from the sale of the bonds so received by it in lieu of the bonds of said Frankfort & State Line Railroad Company provided for in said construction agreement.

From the time of the completion of said line of railroad extending from Frankfort to the Indiana and Illinois State line until the commencement of this suit said line had, in fact, been in the
20 possession of the Toledo, Cincinnati & St. Louis Railroad Company (of Indiana and Illinois), and had been used by it as a part of its line from Kokomo to East St. Louis with the full acquiescence and consent of the Frankfort & State Line Railroad Company, and since the bringing of this suit has been and still is in the possession of the court —, through its receiver, used and operated as a part of said continuous line.

In the construction of other portions of the line from Kokomo to East St. Louis the Western Construction Company became largely indebted to divers contractors, who claimed liens by reason thereof on said line of railroad, and being unable to pay the same in money the capital stock of the Frankfort & State Line Railroad Company received and to be received as aforesaid by the Western Construction Company was reserved by it as a fund out of which to accomplish payment of the debts owing to contractors.

Afterwards, on or about the 20th day of March, 1883, an agreement was entered into between the Toledo, Cincinnati & St. Louis Railroad Company, of the first part; the Frankfort & State Line Railroad Company, of the second part; the Western Construction Company, of the third part; the American Loan and Trust Company of Boston, a corporation of Massachusetts, of the fourth part, and
21 said contractors or certain of them, of the fifth part, whereby, after reciting, among other things, the facts aforesaid relating to said line of railroad from Frankfort to the State line, the manner and purpose of its construction, and the mode of paying for its construction, it was, among other things, agreed in substance as follows, viz: That said first party should assume said debts or certain specified portions thereof of said construction company to said contractors; that the second party, the Frankfort & State Line Railroad Com-

pany, should forthwith deliver to said construction company the remainder of its capital stock due for the construction of its road, to wit, stock amounting to $1,800,000, being the same $1,800,000 of stock above mentioned; that the third party, the construction company, should, and thereby did, deliver said capital stock to the fourth party, the American Loan and Trust Company, subject to the following trusts, viz: To hold as security for the payment of the debts assumed by the first party in certain specified installments, and upon such payment to be delivered over to a certain third person for the use of the first party, but should default be made in
22 the payment of any installment, that then all should become due, and the stock or so much of it as might be necessary should be sold for the payment of the same. Said second party also agreed to turn over to the trust company, the fourth party, subject to the same trust, all the remainder of said capital stock after satisfying the claims thereto of subscribers and on account of tax or local aids.

Your orator shows that said Toledo, Cincinnati & St. Louis Railroad Company, party of the first part to said agreement and defendant herein, made default in the payment of portions of said debts so assumed by it, and that thereupon, upon the demand of creditors interested, said American Loan and Trust Company advertised and was about to sell at public sale all of said capital stock or so much thereof as might be found necessary for the payment of said debts; that to prevent the sacrifice of such stock at such sale and to prevent the breaking of the continuity of said line of railroad from Kokomo to East St. Louis that might result from the passing of the capital stock of said Frankfort & State Line Railroad Company into other and perhaps adverse hands the circuit court of the
23 United States for the southern district of Illinois, upon the petition of William J. Craig, the receiver appointed in the suit pending in said last-mentioned court and hereinafter referred to, filed herein on the — day of January, 1884, by its decretal order authorized and directed said receiver to make and execute receiver's certificates that should be a paramount lien on said line of railroad from Kokomo to East St. Louis wherewith to pay said debts, to secure which said capital stock was so held in trust.

It was further directed in said order that when said capital stock should be so redeemed it should be held by said receiver, subject to the order of the court, as further security for the payment of the receiver's certificates so to be issued, and after payment of said certificates to remain subject to the further order of this court as to its final disposition.

For greater particularity your orator prays that reference may be had to the record of said petition and said order of court as the same remain of record in said cause.

Your orator is advised that pursuant to said order the receiver in this case has executed receiver's certificates to an amount
24 equal to the debts for which said capital stock was pledged in trust and has effected an arrangement with said creditors by which they have accepted said receiver's certificates in satisfaction

of their claims, and that all the certificates of said capital stock so pledged in trust, amounting at par value to $1,800,000, are now in the possession of the receiver pursuant to said order.

6. Your orator further shows that after the execution of the mortgages hereinabove mentioned, to wit, on or about the 1st day of November, 1882, said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, contracted in writing with one Samuel C. Clubb, of the city of St. Louis, in the State of Missouri, for the purchase from him of a large and valuable parcel of land situated in the city of East St. Louis, in the county of St. Clair, in said State of Illinois, for its depot, yards, and other terminal uses. Said purchase was made at and for the sum of $21,217.30, of which sum said railroad company paid in cash down to said Clubb the sum of $8,205. The remainder of said purchase-money, to wit, $13,012.30, endorsed by the promissory notes of said company, was and is to be paid
25 as follows, with interest at the rate of six per centum per annum, payable annually, viz: $5,204.92 on the 1st of November, 1884; $2,602.46 on the 1st of November, 1885; $2,602.46 on the 1st of November, 1886, and $2,602.46 on the 1st of November, 1887. Concurrently with the payment of said $8,205 and the execution of the notes said Samuel C. Clubb, together with his wife, executed and acknowledged a deed of conveyance in fee simple to said railroad company for said land. By agreement of parties said deed was delivered in escrow to one R. J. Lackland, of said city of St. Louis, to be by him held until full payment of the remainder of said purchase-money, and then to be delivered absolutely to said railroad company. Said deed is still held in escrow by said Lackland, and for a particular description of said land reference thereto is made. The interest on said deferred purchase-money up to November 1, 1883, has been fully paid.

On said 1st day of November, 1882, said Toledo, Cincinnati & St. Louis Railroad Company contracted in writing with the Wiggins Ferry Company, a corporation created and existing under the laws of the State of Missouri, having its principal office in said city of St. Louis, for the purchase from it of a certain other large and
26 valuable parcel of land situate in said city of East St. Louis and in said county of St. Clair, Illinois; also for its depot, yards, and other terminal uses, together with a right of way for its railroad, extending from said parcel of land eastwardly about — miles. Said purchase was made at and for the sum of $36,609.10, of which sum it paid in cash down $7,235. The remainder of said purchase-money, to wit, $29,374.10, evidenced by the promissory notes of said railroad company, was and is to be paid as follows, with interest at the rate of six per centum per annum, viz: $11,749.64 on the 1st day of November, 1884, and $5,874.82 on each of the 1st days of November of the years 1885, 1886, and 1887. Concurrently with the payment of said $7,235 and the execution of the notes said Wiggins Ferry Company executed and acknowledged a deed of conveyance in fee simple to said railroad company for said land and said right of way. By agreement of parties said deed was also delivered in escrow to said Lackland, to be by him held until full

payment of the remainder of said purchase-money, and then to be delivered absolutely to said railroad company. Said last-
27 named deed is still held in escrow by said Lackland, and for a particular description of said land and right of way reference thereto is made.

The interest on said deferred purchase-money up to November 1, 1883, has been fully paid.

Your orator shows that since the time of said purchase said Toledo, Cincinnati & St. Louis Railroad Company has been in continuous possession of said parcels of land and right of way, and that all the same are essential to the convenient operations of said railroad.

7. Your orator further shows that the said Toledo, Cincinnati & St. Louis Railroad Company has failed to pay the interest on said bonds and has made default therein to all the holders thereof, and said company has failed to pay the interest warrants or coupons due thereon January 1, 1883, July 1, 1883, and January 1, 1884, and the same have ever since said dates respectively remained and still remain unpaid, although payment of the same was duly demanded, and that said default has continued and said interest has remained in arrears for more than six months; and many of the holders
28 of said bonds to whom such default has been made have requested the said trustees to institute the necessary legal proceedings to foreclose said mortgage and sell the said mortgaged railway and property and for the appointment of a receiver of said property, and to take such other and further steps as may be necessary and proper for the protection of the rights of the holders of said bonds as said trustees are authorized to take by said deed of trust or mortgage.

Your orator further shows that a suit has been commenced by it and the defendant Hendricks in the circuit court of the United States for the southern district of Illinois for the foreclosure of said mortgage, and that a receiver of said mortgaged property has been appointed in said suit, but that no suit in respect to said mortgaged property has been commenced by said trustees in any court of the State of Indiana or in this court; that the defendant Hendricks has refused to unite with your orator as complainant in a suit to be brought to this court; that your orator is advised and believes that, inasmuch as said mortgaged premises are situate in two different States, the rights and interests of the owners and holders of
29 the bonds secured by said mortgage can be properly protected and enforced only by a suit in this court, and therefore the said Thomas A. Hendricks is joined as a party defendant in this bill.

8. Your orator further shows that the said Toledo, Cincinnati & St. Louis Railroad Company—proper corporate action for that purpose having first been had—did on the said 23rd day of July, 1881, execute and deliver to your orator and said Thomas A. Hendricks, as trustees, a certain other indenture of trust and mortgage, whereby it granted, bargained, sold, and conveyed unto said trustees all the railroad, property, rights, franchises, goods, and chattels described or mentioned in the mortgage first set forth in this bill and the net

income thereof to secure the payment at maturity of the principal of three thousand five hundred bonds of said Toledo, Cincinnati & St. Louis Railroad Company, known as income bonds, 2,500 thereof for $1,000 each, numbered consecutively from 1 to 2500, both inclusive, and $1,000 thereof for $500 each, numbered from 1 to 1000, both inclusive, payable on the 1st day of April, 1921, and of such interest upon the said bonds as might become due thereon according to terms of
30 said bonds and of said indenture; that it was by said last-mentioned indenture expressly agreed that interest upon said bonds was not to be due or payable except out of net earnings of said railroad company applicable to such purpose, and when the amount should have been ascertained and declared by the board of directors of said last-mentioned company, whose duty it was, by the terms of said indenture, in each year during the currency of said bonds, beginning with the year 1882, in the month of January, to declare what amount, if any, of net earnings had been made during the preceding fiscal year which was justly applicable to the payment of interest on said income bonds, and such ascertainment of net earnings was to be made by deducting from gross income all operating expenses, including rebates, taxes, insurance, rents, interest on floating and funded debt and borrowed money, and the payments made on the principal thereof, liabilities for interest on the existing first-mortgage bonds of the said railroad company, and other payments, as by reference to said income mortgage will more fully and at large appear.

That the said last-mentioned mortgage was duly recorded
31 in each of the counties in which the said first mortgage was recorded so as to constitute a second lien or mortgage upon the railroad and property thereby conveyed.

And your orator further shows that the same error existed in respect to said last-mentioned income mortgage as hereinbefore stated with respect to said first mortgage, in that the name of the county of Montgomery, Illinois, was inadvertently omitted from the description of said railroad contained in said income mortgage, and that on or about said 17th day of August, 1881, the said railroad company, in order to secure the payment of the principal and interest of the said issue of income bonds and in order to correct the error aforesaid, made, executed, and delivered to said trustees a certain other instrument in writing, bearing date on said last-mentioned day, conveying to said trustees, in trust for the purposes provided in and by said income mortgage, all and singular that part of the said railroad which is situated in and extending through the county of Montgomery, in the State of Illinois, together with its equipments and appendages and the net income thereof, all
32 of which by reference to said last-mentioned instrument will more fully and at large appear.

Your orator further shows on information and belief that three thousand five hundred of said bonds so secured as aforesaid by said second or income mortgage have been issued and disposed of by said Toledo, Cincinnati & St. Louis Railroad Company and are now

in the hands of divers persons as owners thereof who are unknown to your orator.

Your orator further shows that no interest has become or is now due and payable on said last-mentioned bonds under the terms thereof and of said second mortgage owing to insufficiency of earnings, but that the principal of said bonds issued as aforesaid is a lien upon said property, rights, franchises, etc., of said Toledo, Cincinnati & St. Louis Railroad Company described in said mortgage next after the first mortgage hereinbefore described.

9. Your orator further shows that in or about the month of February, 1882, the said corporation known as the Toledo, Cincinnati & St. Louis Railroad Company (of Indiana and Illinois), a
33 coporation of the said States of Indiana and Illinois, and a certain other corporation known as the Frankfort, St. Louis & Toledo Railroad Company, claiming to be a corporation of the State of Indiana, and a corporation known as the Toledo, Delphos & Burlington Railroad Company, organized under the laws of Ohio and Indiana, entered into an agreement with each other, whereby said several corporations undertook, under the name of the Toledo, Cincinnati & St. Louis Railroad Company, to consolidate and unite all the lines of railroad of the Toledo, Cincinnati & St. Louis Railroad Company (of Indiana and Illinois), including said railroad mortgaged as aforesaid, and of the Frankfort, St. Louis & Toledo Railroad Company, at their respective points of connection, and to consolidate the capital stock of the said respective companies under the laws of Ohio, Indiana, and Illinois, and to transfer and vest in said consolidated company, under the name of the Toledo, Cincinnati & St. Louis Railroad Company, all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement or consolidation, said consolidated company expressly recognizing and affirm-
34 ing the said several mortgages hereinbefore mentioned and the said bonds and coupons secured thereby and assuming payment of the same.

And your orator further shows that the said company formed by said last-mentioned consolidation and known as the Toledo, Cincinnati & St. Louis Railroad Company had or claimed to have the power to and did construct or maintain and operate a railroad from the city of Toledo, in the State of Ohio, to the town of Delphos, in said State, and thence through the States of Indiana and Illinois into the city of East St. Louis, in Illinois, including the said railroad mortgaged as aforesaid, and from said town of Delphos to Dayton, Ohio, and also a railroad from Dayton to Wellston, Jackson county, Ohio, and thence to Gallipolis, Gallia county, Ohio, and a branch at or near Ironton, Ohio; and also of the railroad formerly of the Iron Railroad Company in Lawrence county, Ohio, with a branch extending from near Shakertown, Ohio, to a point at or near Lebanon, Ohio, to wit, Dodd's, Warren county, Ohio, and a branch from Mercer to Shanesville, Ohio; and that on or about the
35 5th day of May, 1883, the said Toledo, Cincinnati & St. Louis Railroad Company entered into a further agreement of con-

solidation with two corporations organized under the laws of the State of Ohio, known respectively as the Cincinnati Northern Railroad Company and the Spring Grove, Avondale & Cincinnati Railway Company, the first-named company owning or being engaged in constructing a railroad from Cincinnati, Ohio, to Waynesville, Warren county, Ohio, and the second-named company being the owner of a line of railroad from a point in Cincinnati to Spring Grove Cemetery, Hamilton county, Ohio, which had theretofore been leased to said Cincinnati Northern Railway Company, whereby said three corporations undertook to consolidate and unite all their said lines of railroad and to consolidate the capital stock of the said respective companies under the laws of Ohio, and to transfer to and vest in the said new consolidated company, under the name of the Toledo, Cincinnati & St. Louis Railroad Company (the defendant in this bill of complaint), all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement of consolidation, said
36 consolidated company expressly recognizing and affirming the said several mortgages hereinbefore mentioned and the said bonds and coupons secured thereby and assuming payment of the same, the capital stock of said new consolidated company to be thirty millions of dollars, of which eleven millions was to be preferred stock and the balance thereof to be common stock.

Your orator further shows that it is informed and believes that said several agreements of consolidation were acted upon by said companies from said respective dates, although your orator says that it was not a party to said consolidations or either of them nor has it assented thereto or acquiesced therein; that the said consolidated company has failed to pay the bonds or coupons as to which default has been made as aforesaid or any thereof.

10. Your orator further shows that it is claimed by said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, that it owns, by virtue of said last-mentioned consolidation, all the aforesaid property, rights, franchises, and assets of the said Toledo, Cincinnati & St. Louis Railroad Company mentioned and de-
37 scribed in the two several mortgages aforesaid, and that the same have become subject to the debts and liabilities of said consolidated company; but your orator says that whatever rights, if any, in or to the same the said Toledo, Cincinnati & St. Louis Railroad Company acquired by virtue of said consolidation, the same are subject and subordinate to the several mortgages hereinbefore stated, and that the railroad property, franchises, rights, and assets embraced in and covered by said mortgages are not nor were they at the time of the said last-mentioned consolidation more than sufficient to pay the amount of all the bonds and interest secured thereon by the several mortgages hereinbefore mentioned.

Your orator further shows that several of the constituent companies forming the said consolidated corporation known as the Toledo, Cincinnati & St. Louis Railroad Company heretofore executed various mortgages on the line of railway and property owned by them respectively to your orator, The Central Trust Company of New

York, as trustee, which said mortgages in the aggregate cover, as your orator is informed and believes, substantially all of the
38 property of said defendant, The Toledo, Cincinnati & St. Louis Railroad Company, and that default has been made in the payment of interest on all the bonds secured thereby except income bonds, and that said mortgages are as follows:

1. First mortgage, Toledo, Delphos & Burlington Railroad Company to Central Trust Company, trustee, dated January 17, 1880, to secure $1,250,000 of bonds, and covering the main line of said railroad from Toledo to Kokomo, Indiana.

2. First mortgage (terminal trust), Toledo, Delphos & Burlington Railroad Company to Central Trust Company, as trustee, dated June 21, 1880, to secure $250,000 of bonds, and covering property in Toledo.

3. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated July 1, 1880, to secure $1,000,000 of bonds, and covering Dayton Division from Delphos to Dayton.

4. First mortgage, Toledo, Delphos & Burlington Railroad Company to Central Trust Company, trustee, dated May 16, 1881, to secure $250,000 of bonds, and covering Cincinnati Division from Shakertown to Lebanon, Ohio.

5. First mortgage, Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated May 16, 1881,
39 to secure $2,250,000 of bonds, and covering Southeastern Division from Dayton to point at or near Ironton.

6. First mortgage, Iron Railroad Company to Central Trust Company, trustee, dated August 1, 1881, to secure $500,000 of bonds, covering lines in Lawrence county, Ohio.

7. First mortgage, Cincinnati Northern Railway Company to Central Trust Company, trustee, dated October 1, 1880, to secure $1,000,000 of bonds, and covering line from Waynesville to Cincinnati.

8. First mortgage, Spring Grove, Avondale & Cincinnati Railway Company to Central Trust Company, trustee, dated May 25, 1881, to secure $1,000,000 of bonds, and covering line from Cincinnati to Spring Grove cemetery.

9. The mortgage particularly described in the second paragraph of this bill:

Your orator further shows that there are also other mortgages held by your orator, The Central Trust Company of New York, as trustee, and made by said several constituent railroad companies other than said Spring Grove, Avondale & Cincinnati Railway Company to secure income bonds which are junior to the several
40 first mortgages hereinbefore recited and which are liens upon the aforesaid divisions respectively, except that embraced in and covered by said terminal trust mortgage; that your orator, The Central Trust Company of New York, has commenced or is about to commence in courts of competent jurisdiction proper legal proceedings or suits in equity to foreclose the said several mortgage liens and to procure the appointment of a receiver of each of said

separate lines covered by said respective mortgages; and that your orator is advised and believes that it will be for the interest of all the parties concerned, and especially of the several holders of the bonds and coupons secured by said several and respective mortgages, that the accounts and affairs of each of the said several lines or divisions should be kept separate from each of the other divisions of said consolidated company, and that some one competent person should be appointed as receiver in each of the several suits or proceedings so as aforesaid commenced or to be commenced by your orator as trustee as aforesaid.

Your orator further says that, as it is informed and believes, the net earnings of some or one of the several divisions of the
41 said Toledo, Cincinnati & St. Louis Railroad Company are sufficient, if kept separate, to pay the interest warrants or coupons of the first-mortgage bonds constituting a lien upon such separate division or divisions, but that the said Toledo, Cincinnati & St. Louis Railroad Company claims that the earnings of all the divisions of said road should go into the common fund of said consolidated company, and that no account should be kept of the separate earnings and expenses of each division, and the earnings and income of all of said divisions are now and ever since said consolidation have been received and taken by said consolidated company, the said Toledo, Cincinnati and St. Louis Railroad Company, which is hopelessly insolvent, and appropriated to pay the expenses of said consolidated company and wholly diverted from the payment of the interest or any part thereof due upon the said bonds secured by the several mortgages hereinbefore described and referred to; and your orator further shows that unless a separate account of the earnings and expenses of each of said divisions be carefully kept and preserved it will be impossible to ascertain whether any interest shall have become due and payable
42 upon the income bonds heretofore mentioned or described; that the defendant Braman has filed a bill in this court, claiming to have some interest in the railroad and property hereinbefore described, and is therefore made a party defendant in this suit.

Wherefore and forasmuch as your orator is remediless in the premises at and by the rules of the common law and can only have relief in a court of equity, to the end, therefore, that the said defendants herein may be required to make answer respectively to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were here repeated and they thereunto particularly interrogated, but not under oath, answers under oath being hereby expressly waived; that the said first mortgage may be adjudged and declared to be and to constitute a first lien upon the said line of railway of the Frankfort & State Line Railroad Company, and that the rights and interest of your orator and its co-trustee and of the holders of said bonds and coupons secured by said mortgage in and to the said last-mentioned line of railway and in and to the capital stock of said last-mentioned company

may be ascertained, decreed, and determined; that the said
43 mortgaged property, including said line of railway of the Frankfort & State Line Railroad Company and the said capital stock and the rights and property described in the sixth paragraph of this bill, may be sold, at a judicial sale thereof, free from the claims of all parties hereto or of all persons whose interests are in any manner represented by any party hereto under the decree of this honorable court, and upon such terms and conditions as to the court shall seem meet and proper; that each and all of said defendants and all persons in like situations with them or any of them, and all other persons claiming or to claim by, from, or under them or any of them, may from and by said sale be absolutely barred and foreclosed of and from all right and equity of redemption of, in, and to any and all of the property mentioned and described in this bill; that an account may be had and taken of the bonds secured by the said several mortgages of the said Toledo, Cincinnati & St. Louis Railroad Company and of the amount due on said first-mortgage bonds for principal and interest and of the amount due upon said income mortgage bonds; that out of the proceeds of such sale there may be paid the cost and expenses thereof and a
44 reasonable compensation to your orator and its agents and attorneys for services in connection therewith, and the amount of principal and interest due upon the said first-mortgage bonds and coupons; that the balance, if any, of said proceeds of sale, to the amount of said second-mortgage or income bonds, may be paid to said trustees for the holders of bonds secured by said income mortgage; and that if such proceeds be insufficient for the purposes aforesaid that the said defendants, The Toledo, Cincinnati & St. Louis Railroad Company of Illinois, and the Toledo, Cincinnati & St. Louis Railroad Company of Ohio, Indiana, and Illinois, and each of them, may be adjudged to be liable and may be required to pay to said trustees the amount of any deficiency which may remain after the application of said proceeds in the manner aforesaid; that pending this suit a receiver may be appointed, according to the course and practice of this court, with the usual powers of receivers in like cases, of all and singular of the mortgaged property and premises and the property, franchises, equitable interests, things in action, effects, moneys, receipts, bills, incomes, earnings, rights, privileges, and immunities of said company connected with
45 or relating to said mortgaged premises, and of all the rolling stock, machinery, equipment, and other property incident to the same; that said several railroad corporations may be ordered and directed to transfer and deliver to said receiver all the property, real and personal, and all contracts, records and papers, bills, books of account, deeds, evidences, and muniments of title of or pertaining to said railroad in their respective hands or possession, and that said receiver may be authorized and directed to maintain and operate said railroad and keep the same in proper repair, and to receive, collect, and preserve all the property, assets, and income mentioned or described and included in said first mortgage of said Toledo, Cincinnati & St. Louis Railroad Company, and that such other orders

or directions may be made in respect to said receivership as may be equitable and proper; that an injunction may issue restraining the defendants and each of them *for* interfering with, transferring, selling, or disposing of any of the said mortgaged property, and from taking possession of, levying upon, or attempting to sell the same or any part thereof, and that your orator may have such
46 other or further relief as the nature of the case may require and to your honors seem meet—

May it please your honors to grant unto your orator a writ of subpœna, to be directed to the said defendants, The Toledo, Cincinnati & St. Louis Railroad Company of Illinois, The Toledo, Cincinnati & St. Louis Railroad Company (of Ohio, Indiana, and Illinois), Thomas A. Hendricks, The Frankfort & State Line Railroad Company, and Grenville D. Braman, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before your honors in this honorable court and then and there severally to answer all and singular the matters aforesaid (but not under oath) and to stand to, abide, and perform such other or further orders and decrees therein as to your honors shall seem meet.

THE CENTRAL TRUST COMPANY OF NEW YORK,
By BUTLER, STILLMAN & HUBBARD AND BAKER, HORD & HENDRICKS,
Its Solicitors.

47 And afterwards, at the November term of said court, on the 12th day of November, 1885, before the Honorable Walter Q. Gresham and William A. Woods, judges of said court, the following further proceedings in said cause were had, to wit:

Comes now the Central Trust Company of New York, by Butler, Stillman and Hubbard and Baker, Hord and Hendricks, its solicitors in this behalf, and said Edward F. Leonard, by C. W. Fairbanks and E. Daniels, his solicitors, and James M. Quigley, Halsey J. Boardman, and Warren D. Hobbs (successor to Charles W. Pierce), by McDonald, Butler & Mason, their solicitors, and the Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois and the Toledo, Cincinnati & St. Louis Railroad Company of Indiana and Illinois, by Henry D. Hyde, their solicitor, and the Frankfort and State Line Railroad Company, by Harris & Calkins, *his* solicitors, and John E. Smith and Elverton R. Chapman, by Harris & Calkins and F. Winter, their solicitors, and the Farmers' Loan and Trust Company, by Turner, Lee and McClure, its solicitors, and the said Thomas A. Hendricks, in his own proper person, and the said Grenville D. Braman, being three times audibly called, comes not, but herein makes default, and, it appearing that
48 he had duly entered his appearance as defendant on August 13, 1884, it is ordered and adjudged that the matters and things in the bill of complaint mentioned be as to him taken as true and confessed.

And this cause, now coming on to be heard, is set down for hearing and final decree upon said bills of complaint and the exhibits therewith and the answers of said defendants respectively and upon the evidence taken and reported to this court by the master; also the original mortgages in the bill of complaint mentioned and the master's reports herein; and the court, having heard the same and the arguments of counsel and being sufficiently advised, finds that the material averments of said bills of complaint and said cross-bill of the Farmers' Loan and Trust Company are true, and that the equity of this cause is with the complainants.

First. And the court particularly finds from the pleadings, exhibits, and — aforesaid that heretofore, to wit, on and prior to the first day of January, 1879, there existed under the laws of the State of Indiana a corporation known as the Frankfort and Kokomo Railroad Company, owning a line of railroad extending from the city of Frankfort, in the county of Clinton, to Kokomo, in the county of Howard, all in the State of Indiana, being about
49 twenty-five miles in length; that on or about said last-named day said company executed and issued its certain two hundred first-mortgage corporate bonds for the sum of one thousand dollars each, payable on the first day of January, 1909, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July of each year, with a proviso in each of said bonds that in case of non-payment of any half-yearly installment of interest and the continuance of such default for six months the principal of such a bond should become presently due and payable; that at the same time to secure the payment of the *payment of the* principal and interest of said bonds said Frankfort and Kokomo Railroad Company executed, acknowledged, and delivered to said Farmers' Loan and Trust Company its certain deed of trust or mortgage upon its said line of its said railroad extending from said city of Frankfort to Kokomo, Indiana; that on and before the commencement of this suit one hundred and thirty of the two hundred bonds of said Toledo, Cincinnati & St. Louis Railroad Company of Indiana and Illinois hereinafter mentioned and the remainder thereof, to wit, seventy, are outstanding
50 in the hands of divers holders; that default has been made in the payment of the half year's interest on said seventy bonds which fell due on the 1st day of July, 1883, and in the payment of each subsequent installment of interest thereon; that there is now due and owing as principal and interest on said seventy bonds to said Farmers' Loan and Trust Company, as trustee for the holders of said bonds, the sum of eighty-five thousand one hundred and eight dollars and twelve cents.

Second. And the court further finds that afterwards said Frankfort and Kokomo Railroad Company became consol dated with certain other railroad companies of the States of Indiana and Illinois; that said consolidated corporation was created and organized for the purpose of constructing, owning, and operating a line of railroad between a connection with a certain other railroad, known as the Toledo, Delphos and Burlington railroad, in the city of Kokomo,

Howard county, in the State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery, Fountain, Parke, and Vermillion, in the State of Indiana, and the counties of Vermillion, Edgar, Douglass, Coles, Cumberland, Shelby,
La Fayette, Bond, Madison, and St. Clair, in the State of Illi-
51 nois, to the city of East St. Louis, in St. Clair county, Illinois.

That it was the purpose and intention of the directors and stockholders of said The Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois to obtain through a connection or union of the road of said last-named company with said Toledo, Delphos and Burlington railroad a continuous line of railroad extending from the city of Toledo, in the State of Ohio, to said city of East St. Louis, in the State of Illinois.

That afterwards, to wit, on the 23d day of July, 1881, said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois executed, under its corporate seal, its three thousand negotiable corporate bonds for the sum of one thousand dollars each, dated the 23d day of July, 1881, payable in gold coin of the United States on the 1st day of July, 1921, with interest at the rate of six per cent. per annum, payable semi-annually on the 1st days of January and July of each year, in gold coin, at the city of New York or London, England, each of said bonds having interest warrants or coupons for thirty dollars each for the payment of interest.

That to secure the payment of the interest and principal of
52 all of said bonds equally and without preference said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois did on said 23d day of July, 1881, execute and deliver to the complainant, The Central Trust Company of New York, and the defendant, Thomas A. Hendricks, as trustees for the holders of said bonds, its certain indenture of trust and mortgage whereby it granted, conveyed, and confirmed to said trustees, their heirs or successors forever, in trust, all and singular the line of railroad of said party of the first part, as the same then was or might thereafter be constructed, between a connection with the Toledo, Delphos and Burlington railroad in the city of Kokomo, Howard county, State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery, Fountain, Parke, and Vermillion, in the State of Indiana, and the counties of Vermillion, Edgar, Douglass, Coles, Cumberland, Shelby, Fayette, Bond, Madison, and St. Clair, in the State of Illinois, to the city of East St. Louis, in St. Clair county, Illinois, being about two hundred and seventy miles in length, together with all and singular the right of way, road bed, made or to be made, its track, laid or to be laid, between the termi-
nal points aforesaid, together with all the stations, depot
53 grounds, rails, fences, bridges, sidings, engine-houses, machine shops, buildings, erections in any way then owned or to be thereafter acquired or then or thereafter appertaining unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or at any time thereafter held, owned, or acquired by said Toledo, Cincinnati and St. Louis Railroad Company for use in connection with its line of railroad

aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights then and thereafter owned by said Toledo, Cincinnati and St. Louis Railroad Company in connection with its line of railroad aforesaid between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be received or derived therefrom.

That said indenture of trust or mortgage was conditioned for the punctual payment of each installment of interest and the principal of all said three thousand bonds as the same should respectively mature; that on said 23d day of July, 1881, said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois executed to the same trustees a certain other indenture of trust and
54 mortgage, whereby it granted and conveyed to said trustees in trust all the railroad property, rights, franchises, goods, and chattels described or mentioned in the above-described mortgage and the net income thereof to secure the payment at maturity of the principal of its three thousand five hundred other corporate bonds known as income bonds, 2,500 thereof for one thousand dollars each and one thousand thereof for five hundred dollars each, payable on the 1st day of April, 1921, and of such interest on said bonds as might become due thereon according to the terms of said bonds and indenture; that it was by said last-mentioned indenture expressly agreed that interest upon said coupons was not to be due and payable except out of net earnings of said railroad company applicable to such purpose.

That at the time of the execution and delivery of said two indentures of trust and mortgage the railroad of said Toledo, Cincinnati and St. Louis Railroad Company extended and still extends through the county of Montgomery, in the State of Illinois, in addition to the counties named in said indentures, but that the name of said county was inadvertently omitted from the description
55 of said railroad, and that subsequently and before the commencement of this suit and in order to correct said error in description a mortgage supplemental to each of the foregoing mortgages or deeds of trust was executed and delivered to said trustees by said Toledo, Cincinnati and St. Louis Railroad Company, whereby the lien of each of said first-named mortgages or deeds of trust was extended over that portion of said railroad extending through said Montgomery county the same as though that county had been named in said first two mortgages respectively.

That said first two mortgages were duly recorded in all the counties in the States of Indiana and Illinois through which said railroad extends, and that said two supplemental mortgages were duly recorded in said Montgomery county, Illinois.

That of the three thousand bonds secured by said first-named indenture of trust and mortgage executed by said Toledo, Cincinnati and St. Louis Railroad Company twenty-nine hundred and thirty bonds, amounting to $2,930,000 of principal, were sold and issued and are now outstanding in the hands of divers persons and corporations.

That all of the 3,500 bonds, amounting in the aggregate to
56 $3,000,000 of principal, secured by said second mortgage of said Toledo, Cincinnati & St. Louis Railroad Company have been sold and issued and are now outstanding in the hands of divers persons and corporations, but that no interest is due thereon.

That said Toledo, Cincinnati and St. Louis Railroad Company made default in the payment of its interest coupons pertaining to all said 2,930 outstanding bonds secured by its said first-named mortgage that fell due January 1st, 1883, July 1, 1883, and January 1, 1884, before the commencement of this suit, and that it has in like manner made default in the payment of all coupons that have matured since that time, to wit, July 1, 1884, January 1, 1885, and July 1, 1885.

That said interest coupons so overdue and unpaid amount, with the interest thereon, to the sum of six hundred and thirty-nine thousand six hundred and fifteen dollars and thirty-six cents.

Third. The court further finds that so much of said line of railroad, described in the aforesaid mortgages, as lies between the city of Frankfort, Clinton county, Indiana, and the line dividing the States of Indiana and Illinois, being about sixty-seven miles
57 in length, was constructed by a company known as the Western Construction Company under a written contract entered into between it and said Frankfort and State Line Railroad Company on the 31st of August, 1880, except eleven and 3-tenths miles that had theretofore been built.

That it was intended by both parties to the contract that the road to be constructed should become by consolidation a portion of a continuous line of narrow-gauge railroad extending from Toledo, Ohio, to East St. Louis, Illinois.

That in the contract it was provided, among other things, that as payment for the labor and expense of construction the Frankfort and State Line Railroad Company should make and deliver to the construction company its corporate seven per cent. bonds, at the rate of ten thousand dollars for each mile of the road, secured by a first mortgage on the road, and should also deliver to it certificates for all the shares of its capital stock as fully paid up, except so many shares thereof as might be found necessary to fill individual and municipal subscriptions thereto.

That the total number of the shares of capital stock of said Frankfort and State Line Railroad Company amounted at their
58 par value to $2,000,000, and that said construction company received thereof on its said contract a number of shares, amounting at their par value to $1,800,000.

In and by said contract it was, among other things, provided that the bonds so to be paid and delivered to said construction company should bear interest at the rate of seven per centum per annum, payable semi-annually on the first days of January and July of each year, beginning on the 1st day of January, 1881, and should be secured by a first mortgage on all the property, both real and personal, of said railroad company.

That said construction company afterwards pledged all the shares

of capital stock so received by it to secure debts owing by it to sub-contractors for work done and material furnished in the construction of said Frankfort and State Line railroad and other portions of said Toledo, Cincinnati, and St. Louis railroad; that by a written contract afterwards, to wit, on the 20 day of April, 1883, entered into between the Toledo, Cincinnati and St. Louis Railroad Company, a corporation of the States of Ohio, Indiana, and Illinois, hereinafter mentioned, said Frankfort and State Line Railroad Company, and said Western Construction Company and others it was stipu-
59 lated and agreed, among other things, in substance and effect that said Toledo, Cincinnati and St. Louis Railroad Company should assume and pay all the debts of said Western Construction Company for which said capital stock was so pledged, and that upon such payment all said $1,800,000 of capital stock should become the property of said Toledo, Cincinnati and St. Louis Railroad Company, and that the same might be used for the purpose of effecting a consolidation of said last-named company with said Frankfort and State Line Railroad Company, said capital stock meanwhile remaining in pledge as a security for such payment.

That said Toledo, Cincinnati and St. Louis Railroad Company failed prior to the commencement of this suit and the appointment of a receiver herein to pay said debts so assumed by it; that the receiver has, under the authority of the court, paid all the debts so assumed by said Toledo, Cincinnati and St. Louis Railroad Company for which said capital stock was so pledged, amounting in all — $——, by making and delivering to the respective creditors receiver's certificates therefor, which are a lien upon said line of railroad
60 extending from Kokomo to East St. Louis, and as further security for the payment of which he received and now holds the *the* certificates for all said $1,800,000 of capital stock, and after payment of said receiver's certificates he will hold said capital stock subject to the order of the court.

It is further found that after the making of said contract of August 31st, 1880, by the Western Construction Company and the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois for the construction of the road of the latter company and before said road was constructed, to wit, on the 9th day of June, 1881, said Western Construction Company and said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois entered into a written contract by which said construction — agreed to build and construct the entire line of said railroad company from said city of Kokomo, Indiana, to said city of East St. Louis, Illinois, through the counties and places mentioned in the aforesaid mortgage, a distance of about 270 miles. As payment for the labor and expense of construction the Toledo, Cincinnati and St. Louis Railroad Company agreed to execute and deliver to the construction company its corporate first-mortgage bonds to the amount of $3,000,000,
61 and its second-mortgage income bonds to the amount of $3,000,000, and its capital stock amounting at its par value to $4,000,000; that the specifications as to the manner and character of the construction of said line of railroad were substantially

the same as those contained in said contract of August 31, 1880, for the construction of said Frankfort and State Line railroad.

That the line of said last-named road was coincident with so much of the proposed line of said Toledo, Cincinnati and St. Louis railroad from Kokomo to East St. Louis and was intended as a part thereof, and the construction thereof was continued and completed as in part performance of said contract of June 9, 1881, with the knowledge and acquiescence of said Toledo, Cincinnati and St. Louis Railroad Company and of said Frankfort and State Line Railroad Company.

That after the making of said construction contract of June 9th, 1881, it was agreed by and between said Toledo, Cincinnati and St. Louis Railroad Company that the bonds and mortgage of the said Toledo, Cincinnati & St. Louis Railroad Company herein first above mentioned should be executed and said entire line
62 built with the proceeds of sales of the bonds, and that the separate mortgage on said Frankfort and State Line railroad provided for in said construction contract of August 31, 1880, should not be executed, inasmuch that it was believed that bonds secured by a general first mortgage — the entire line could be sold more advantageously in the market than bonds secured by divisional or sectional mortgages; that thereupon, with the acquiescence and consent of said Frankfort and State Line Railroad Company, the bonds and mortgages hereinabove mentioned were executed, and with moneys derived from the sale of said bonds said Frankfort and State Line railroad was built.

That upon the completion by said Western Construction Company of said Frankfort and State Line road, to wit, in the spring of 1882, the same was, by said Frankfort and State Line Railroad Company, turned over to and placed in full possession of said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois as its property and as a part of its said line of railroad extending from the said city of Kokomo to said city of East St. Louis, from and after which time and until taken possession of by
63 the receiver herein the same remained in the exclusive possession of said last-named company and was used and operated by it as a part of the said line.

That a legal consolidation of said Frankfort and State Line Railroad Company and said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois was not made for the reason that said companies and said construction company were advised by counsel that such consolidation might operate a forfeiture of certain local aids or municipal subscriptions to the capital stock of said Frankfort and State Line Railroad Company; but it was still intended by said companies that such consolidation should be made and that said $1,800,000 of the capital stock of said Frankfort and State Line Railroad Company should be used and voted for that purpose.

That it was known to the directors and active promoters of said Frankfort and State Line Railroad Company that its road was being built with moneys derived from the sale of said bonds of the

Toledo, Cincinnati and St. Louis Railroad Company secured by said mortgage embracing its line instead of moneys obtained
64 by mortgage bonds provided for in said construction contract of August 31, 1880.

It is found that said Central Trust Company of New York and said Thomas A. Hendricks, as trustees for the holders of said 2,930 bonds now outstanding, secured by said first above mentioned mortgage, and for their benefit, have in equity a lien on said Frankfort and State Line railroad, and that the purchaser or purchasers of said mortgaged premises under this decree will, by virtue of such purchase, be entitled to take, hold, and own said $1,800,000 of the capital stock of said Frankfort and State Line Railroad Company.

Fourth. And the court further finds that afterwards, to wit, on the 1st day of March, 1882, said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois and two certain other railroad corporations, viz., the Toledo, Delphos and Burlington Railroad Company, a corporation of the States of Ohio and Indiana, and the Frankfort, St. Louis and Toledo Railroad Company, a corporation of the State of Indiana, owning together a line of railroad extending from Toledo, Ohio, to East St. Louis, Illinois, by written articles of agreement duly made, executed, and authorized, became consolidated into one corporation under the name of The
65 Toledo, Cincinnati and St. Louis Railroad Company, the principal defendant herein.

That the said consolidated corporation became thereby possessed of all the rights, privileges, and franchises of said constituent companies and of all their property of every kind, and also became liable for all their debts and obligations of whatever name or kind.

In and by said articles of consolidation all issues of bonds and mortgages securing the same there-fore made by said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois were expressly ratified and confirmed.

It is therefore finally ordered, adjudged, and decreed by the court that the defendant, The Toledo, Cincinnati and St. Louis Railroad Company, do pay to the Central Trust Company of New York and Thomas A. Hendricks, as such trustees, the said sum due upon the unpaid and overdue interest coupons appertaining to the bonds secured by said first-mentioned mortgage of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, to wit, said sum of six hundred and thirty-five thousand six hundred and fifteen dollars and thirty-six cents, with interest thereon at the rate of
66 six per cent. per annum, together with the costs of this suit, taxed at —, within five days from *the* and after the entry of this decree, and that in default of such payment within such time by said defendant, then and in that case said second or income mortgage bondholders shall have the privilege within the next succeeding five days of making such payment, and in default of such payment by any of said defendants or by said bondholders all equity of redemption of said defendant- herein and of each and every of them in and to the line of railroad and other mortgaged property hereinabove described as conveyed to said trustees in trust by said indenture

of trust or mortgage executed to them by said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois on the 23d day of July, 1881, be forever barred and foreclosed, and that all and singular of the said mortgaged premises, rights, and franchises be sold as hereinafter ordered and directed and as an entirety, the same being, in the opinion of the court, not susceptible of sale in parts without prejudice to all parties interested therein.

It is further ordered, adjudged, and decreed that upon the
67 sale herein ordered and upon the delivery to the purchaser or purchasers of the possession of the mortgaged premises the receiver shall assign and deliver to him or them as his or their property the certificates representing one million eight hundred thousand dollars of the capital stock of the Frankfort and State Line Railroad Company.

And it is further ordered and adjudged and decreed that the purchaser or purchasers of said mortgaged premises shall have all the rights, privileges, and benefits in respect to the terminal property at East St. Louis reserved to such purchaser or purchasers by the order and decree of this court made and entered herein on the 14th day of September, 1885.

Said sale shall be without relief from valuation or appraisement laws and free from all right of redemption, and shall be made by William P. Fishback and John McNulta, special masters in chancery now here appointed to make the same, and a certified copy of this decree delivered to them shall be their authority for making the sale.

It is further ordered, adjudged, and decreed that said masters in chancery shall give previous notice of the time, place, and
68 terms of such sale by advertisement in one newspaper published in the city of New York, State of New York; one in the city of Boston, Massachusetts; one in the city of Indianapolis, Indiana, and one in the city of Springfield, Illinois, once a week for four consecutive weeks. The first such publication shall not be less than thirty days before the day of sale. Said sale shall be made by public auction to the highest bidder at the door of the United States circuit court room, in the city of Indianapolis, Marion county, Indiana. The said masters are hereby ordered to require a deposit of fifty thousand dollars by each and every separate bidder or by any number of bidders uniting in one bid before receiving any bid from such person or persons; which deposit shall be forfeited to the use of the trust in the hands of said trustees if the bidders to whom the property shall be struck off shall fail to pay or to complete said purchase.

It is further ordered, adjudged, and decreed that within twenty days from and after the confirmation of such sale the purchaser or purchasers *of* shall pay of the unpaid purchase-money a sum
69 sufficient, together with said deposit of fifty thousand dollars, to pay and discharge the court costs, the masters' fees, solicitors' and counsel fees, and the claims and debts, including taxes legally due on the property, which shall have been then found and finally adjudged to be due and payable as court and receiver's in-

debtedness and to be paramount in equity to the lien of said indenture of trust or mortgage herein decreed to be foreclosed excepting such final decrees for the payment of moneys out of said fund as may have been superseded by and upon proper appeal, and upon such payment by such purchaser or purchasers he or they shall be let into the possession, use, and enjoyment of the said railroad and property, subject to the conditions and stipulations hereinafter contained.

Upon confirmation of any sale to be made under this decree and upon payment within twenty days thereafter of such part of the purchase-money as may be required to comply with the provisions and directions of this decree the master- shall make, execute, and deliver to the purchaser or purchasers a deed conveying to
70 him or them all and singular the mortgaged premises and franchises so sold and purchased. Said deed shall contain an express stipulation reserving to the court, and the court does hereby reserve, full power, upon default of the purchaser or purchasers in complying with any of the provisions or requirements of this decree respecting payment of the purchase-money, to retake, through its receiver, possession of all or any part of the mortgaged premises so sold and forthwith sell the same or any part thereof upon its order to that effect made and entered.

Said deed shall also contain a stipulation that the purchaser or purchasers or his or their assigns shall forthwith yield possession of the said mortgaged premises in compliance with such order of court to be made upon default in the payment of purchase-money. Upon the delivery of said deed by the masters to the purchaser the receiver and all persons acting by or under his authority shall deliver possession to the purchaser or purchasers on production of the masters' deed or other proper evidence of the execution and delivery thereof of all said mortgaged premises, and shall also surrender and deliver up to such purchaser or purchasers all books of
71 account and records in his hands as such receiver.

The residue of the purchase-money not required to make the payments hereinbefore required to be made prior to the delivery of possession shall be paid by the purchaser or purchasers from time — as paramount claims against the funds may be finally ascertained by decree of this court, such payment to be made upon twenty days' notice by the master-, pursuant to the order of the court to that effect entered requiring such payment, until the entire purchase-money shall have been paid.

If any surplus of the purchase-money shall remain after full payment of court and receiver's indebtedness the same shall be distributed *pro rata* upon the coupons and bonds secured by the indenture of trust and mortgage hereby foreclosed:

Provided, however, in case said mortgaged premises shall bring at such sale a price per mile exceeding ten thousand dollars and interest thereon at the rate of seven per centum per annum from the first day of January, A. D. 1881, then it is ordered that the masters making the sale shall bring into court all such excess rep-
72 resenting said sixty-seven miles of road known as the Frank-

fort and State Line railroad to abide the further order of the court as to the disposition thereof.

If any surplus shall remain after full payment of said overdue coupons and bonds secured by said first-named mortgage of July 23, 1881, such surplus so remaining shall be distributed *pro rata* upon said thirty-five hundred income bonds.

In making payment of any surplus of purchase-money that may be left after full payment of costs, allowances, and court and receiver's indebtedness the purchaser or purchasers shall have the privilege of paying such surplus with the interest coupons and bonds to which the same may be applicable, as hereinabove provided, at such price as the holder thereof would be entitled to receive in cash if the entire purchase-money were paid in cash.

The holder or owner of any claim finally adjudged or conceded to be due and payable out of said fund prior to said mortgaged bonds and coupons who may become a bidder at such sale shall have the privilege of turning in his said claim as part of the
73 purchase-money at such price or sum as he would be entitled to receive thereon out of the proceeds of sale.

To the end that all just claims against said property may be speedily adjusted and allowed *that* all persons, firms, and corporations having or asserting any claim against said property accrued while said property has been in the possession of the court whose claim or claims have not already been presented and filed shall, within sixty days after the entry of this decree, present and file in this court such claim or claims, showing upon its face when and where it accrued and upon what it is founded; and it is directed that the master, in his notice of sale, as hereinabove required, shall make proper mention of this order, which shall be all the notice thereof required to be given, and all persons, firms, and corporations not having filed their claims within sixty days, as herein provided, shall be, and they are hereby, barred and foreclosed.

But this order shall not apply to operatives or employés rendering or having rendered services to the receiver herein whose names and services appear on the pay-rolls of the receiver.

74 The distribution of the proceeds of the sale of said railroad and mortgaged premises under this decree shall be as follows:

First. The court costs and masters' fees as the same may hereafter be ascertained.

Second. To said Farmers' Loan and Trust Company said sum of eighty-five thousand one hundred and eight dollars and twelve cents due on said bonds and coupons of said Frankfort and Kokomo Railroad Company.

Third. To court and receiver's indebtedness and solicitors' and counsel fees.

Fourth. *Pro rata* distribution upon *upon* the coupons and bonds secured by the indenture and mortgage by this decree foreclosed.

Fifth. *Pro rata* distribution upon the income bonds hereinbefore mentioned.

Leave is hereby reserved to said trustees and to the purchaser or purchasers at the foreclosure sale under this decree to appeal from

any order or final decree made by the court directing the payment of claims as prior and paramount to said mortgage bonds and coupons.

It is ordered that the clerk of this court do forthwith make
75 and deliver to the circuit court of the United States for the southern district of Illinois a certified copy of this decree.

And it is further ordered that any or either of the parties to this cause may apply to the court for such other and further directions at the foot of this decree as may be necessary to carry it into effect according to its true intent and meaning.

The counsel for the defendants, The Frankfort and State Line Railroad Company and John S. Smith and Elverton R. Chapman, requested and moved the court to insert in the foregoing decree a provision requiring the Toledo, Cincinnati and St. Louis Railroad Company to return to the possession of the Frankfort and State Line Railroad Company certain rolling stock and tools that had been delivered by said last-named company to said first-named company at the time of the delivery of possession of said Frankfort and State Line road, said property being described by the witness James H. Rice as the following: "One locomotive, 3 or 4 flat cars—construction -ars—and several hand push cars and some tools;" which motion and request was disallowed by the court.

76 And thereupon said Frankfort and State Line Railroad Company and said John S. Smith and said Elverton R. Chapman prayed an appeal from this decree to the Supreme Court.

And thereupon the complainants made a counter-motion that Smith and Chapman, not being proper parties to this suit, be dismissed therefrom as defendants; which counter-motion was disallowed by the court; and the court granted said prayer for an appeal upon condition that the appellants file a supersedeas bond, with sufficient sureties, to be approved by the court, in the sum of eight hundred thousand dollars and a cost bond in the sum of one thousand dollars.

And afterwards, to wit, at the November term, on the 30th day of December, 1885, before the Honorable Walter Q. Gresham and Honorable William A. Woods, judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William P. Fishback and John McNulta, the special masters appointed herein and charged with the duty of making the sale, and file their report of sale herein in the words following, to wit:

77 To the honorable court:

The undersigned, William P. Fishback and John McNulta, the special masters appointed herein and charged with the duty of making the sale herein, according to the directions of the several orders and decrees made in the above-entitled cause in the circuit court of the United States for the district of Indiana and the southern district of Illinois, respectfully report to the court as follows:

Pursuant to said orders and decrees, notice of the time, place, and terms of sale was given by publication of said notice as follows:

In the Daily New York Evening Post, a daily newspaper of general circulation printed and published in the city of New York, State of New York, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Springfield, Illinois, Journal, a daily news-
78 paper of general circulation printed and published in the city of Springfield, State of Illinois, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Indianapolis Journal, a daily newspaper of general circulation printed and published in the city of Indianapolis, State of Indiana, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

In the Daily Boston Journal, a daily newspaper of general circulation printed and published in the city of Boston, State of Massachusetts, on the days following, viz: Nov. 28th, Dec. 5th, 12th, 19th, and 26th, A. D. 1885.

The publication of this said notice in each and all of said newspapers began at least thirty days prior to the time of sale, and
79 said notice was to the effect that said sale would take place at the door of the United States circuit court room on Wednesday, the 30th day of December, A. D. 1885, at 12 o'clock m. of said day.

Copies of said notices as published in said newspapers, accompanied by affidavits showing the publication thereof, are filed herewith and made part of this report.

After having given said notice in the manner aforesaid, and pursuant thereto, and in obedience to the several decrees and orders of said courts in that behalf, the undersigned, special masters, attended in person at the said city of Indianapolis, county of Marion and State of Indiana, and at the door of the United States circuit court room for the district of Indiana, upon the day appointed and at the hour named in said notice of sale, and, in the presence of a number of persons attending said sale and having the opportunity to
80 bid thereat, did then and there at public outcry openly offer and expose to sale, upon the terms and provisions of said decrees and orders of said courts and said notice of sale, as an entirety all and singular the entire railroad of the Toledo, Cincinnati and St. Louis Railroad Company extending from the city of Kokomo, in the State of Indiana, to the city of East St. Louis, in the State of Illinois, with all its franchises, rights, and privileges as described in the printed paper which was read by the special masters at the time and in the hearing of the persons so assembled, to wit:

Masters' Sale of the Toledo, Cincinnati & St. Louis Railroad from Kokomo to East St. Louis, Commonly Known as the St. Louis Division.

In obedience to an order of sale issued out of the circuit court of the United States for the district of Indiana upon a decree

81 rendered in a cause wherein The Central Trust Company of New York, Edward F. Leonard, James M. Quigley, and others were complainants and The Toledo, Cincinnati & St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants, and of a like decree rendered by the circuit court of the United States for the southern district of Illinois in an ancillary cause wherein The Central Trust Company of New York and Thomas A. Hendricks were complainants and The Toledo, Cincinnati & St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants, in which a decree of foreclosure has been entered in each of said courts upon certain mortgages and trust deeds executed by the Toledo, Cincinnati & St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, as trustees, on the 23d day of July, A. D. 1881, the
82 undersigned, special masters appointed by the said courts, will offer for sale at public auction to the highest bidder, at the door of the United States circuit court room, in the city of Indianapolis, Marion county, Indiana, on Wednesday, the 30th day of December, A. D. 1885, at 12 o'clock noon of said day, all the following-described property, namely:

All and singular the line of railroad between a connection with the Toledo, Delphos and Burlington railroad in the city of Kokomo, Howard county, State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery, Fountain, Parke, Vermillion, in the State of Indiana, and the counties of Vermillion, Edgar, Douglas, Coles, Cumberland, Shelby, Fayette, Bond, Madison, Montgomery, and St. Clair, in the State of Illinois, to the city of East St. Louis, in St. Clair county, Illinois, being about two hundred and seventy miles in length, together
83 with all and singular the right of way, road-bed, and track laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, machine shops, buildings, and erections in any way appertaining unto said line of described railroad between said points, together with all machinery, supplies, tools, and fixtures owned by the said Toledo, Cincinnati & St. Louis Railroad Company for use in connection with the line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, and leasehold rights in connection with said line of railroad between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be received or derived therefrom.

All of said railroad property above described to be sold, with its appurtenances, as an entirety and without relief from valua-
84 tion or appraisement laws and free from all right of redemption.

The purchaser of said mortgage- premises shall have all the rights, privileges, and benefits in respect of the terminal property at East St. Louis reserved to such purchaser or purchasers by the order and decree of said circuit court of the United States for the district of

Indiana made and entered herein on the 14th day of September, 1885.

A deposit of fifty thousand dollars will be required from each and every separate bidder or by any number of bidders uniting in one bid before receiving any bid from such person or persons, which deposit will be forfeited to the use of the trust in the hands of said trustees if the bidders to whom the property shall be struck off shall fail to pay or complete said purchase.

No bid will be received for a less sum than nine hundred thousand dollars.

85 Within twenty days from and after the confirmation of such sale the purchaser or purchasers shall pay of the unpaid purchase-money a sum sufficient, together with the said deposit of fifty thousand dollars, to pay and discharge the court costs, masters' fees, solicitors' and counsel fees, and the claims and debts, including taxes legally due on the property, which shall have been then found and finally adjudged to be due and payable as court and receiver's indebtedness and to be paramount in equity to the liens of said indentures of trust decreed to be foreclosed in said suits, excepting such final decrees for the payment of money out of said fund as may have been superseded by and upon proper appeal; and upon such payment by such purchaser or purchasers he or they shall be let into the possession, use, and enjoyment of the said railroad and property, subject to the conditions and stipulations following.

86 Upon confirmation of sale, and upon payment within twenty days thereafter of such part of the purchase-money as may be required to comply with the provisions and directions of the decrees and orders of sale, the masters will make, execute, and deliver to the purchaser or purchasers a deed conveying to him or them all and singular the railroad property so sold, with its appurtenances, which deed will contain an express stipulation reserving to the court full power, upon default of the purchaser or purchasers in complying with any of the provisions or requirements of said decree of foreclosure and sale respecting payment of the purchase-money, to retake, through its receiver, possession of all or any part of the mortgaged premises so sold and forthwith sell the same or any part thereof upon its order to that effect made and entered.

87 Said deed will also contain a stipulation that the purchaser or purchasers or his or their assigns shall forthwith yield possession of said mortgaged premises in compliance with such order of court to be made upon default in the payment of purchase-money.

The residue of the purchase-money not required to make the payments hereinbefore required to be made prior to the delivery of possession shall be paid by the purchaser or purchasers from time to time as paramount claims against the fund may be finally ascertained by decree of the court, such payments to be made upon twenty days' notice by the master pursuant to the order of court to that effect entered, requiring such payment until the purchase-money shall have been paid. If any surplus of the purchase-money shall remain after full payment of the court and

receiver's indebtedness the same shall be distributed *pro rata* upon the coupons and bonds secured by the indentures of trust
88 and mortgages hereby foreclosed: provided, however, in case said mortgaged premises shall bring at such sale a price exceeding $10,000 per mile and interest thereon, at the rate of 7 per cent. per annum, from the 1st day of January, A. D. 1881, then it is ordered that the masters making the sale shall bring into court all such excess representing said sixty-seven miles of road, known as the Frankfort & State Line railroad, to abide the further order of the court as to the distribution thereof.

If any surplus shall remain after full payment of the overdue coupons and bonds secured by the mortgage first named in said decree dated July 23, 1881, such surplus so remaining shall be distributed *pro rata* upon the 3,500 income bonds.

In making payment of any surplus of purchase-money that may be left after full payment of costs, allowances, and court and
89 receiver's indebtedness the purchaser or purchasers shall have the privilege of paying such surplus with the interest coupons and bonds to which the same may be applicable, as hereinbefore provided, at such price as the holder thereof would be entitled to receive in cash if the entire purchase-money were paid in cash.

The holder or owner of any claim finally adjudged or conceded to be due and payable out of said fund prior to said mortgage bonds and coupons who may become a bidder at such sale shall have the privilege of turning in his said claim as part of the purchase-money at such price or sum as he would be entitled to receive thereon out of the proceeds of sale.

And to the end that all just claims against said property may be speedily determined and adjudged, notice is hereby given that all persons, firms, and corporations having or asserting any claim
90 or claims against said property, accrued while said property has remained in the possession of the court, whose claim or claims have not already been filed or presented shall, within sixty days from and after the 12th day of November, A. D. 1885, file and present to the circuit court of the United States for the district of Indiana such claim or claims, showing upon the face thereof when, where, and for what such claims accrued; and all persons, firms, and corporations not having presented and filed their claims within said sixty days shall be forever barred and foreclosed:

Provided that operatives and employés having claims for services rendered to the receivers appointed by this court, whose names and services appear upon the pay-rolls of said receivers, shall not be required to present their claims under this notice.

W. P. FISHBACK,
JOHN McNULTA,
Special Masters.

91 BUTLER, STILLMAN & HUBBARD,
BAKER, HORD & HENDRICKS,
McDONALD, BUTLER & MASON, AND
C. W. FAIRBANKS, *Solicitors.*

And thereupon Sylvester H. Kneeland did bid for said property the sum of nine hundred and one thousand dollars ($901,000).

Before said bid was considered or received said bidders placed on deposit with said special masters the sum of fifty thousand dollars in cash as a pledge that the bid so made would be made good in case of acceptance, which sum was then and there paid into court by delivering the same to Noble C. Butler, Esq., clerk of the U. S. circuit court for the district of Indiana.

92 And no one bidding more and that being the highest and best bid, and more than the minimum price fixed by the orders of said court for the sale of said property, it was thereupon then and there, at the hour of twelve o'clock & 45 minutes of said day, openly and publicly struck off and sold to the said Sylvester H. Kneeland for the sum of nine hundred and one thousand dollars ($901,000).

And said special masters submit their doings herein for the consideration and further order of the court.

December 30th, 1885.

Respectfully submitied.

WILLIAM P. FISHBACK,
JOHN McNULTA,
Special Masters.

93 And afterwards, to wit, at the November term of said court, on the 5th day of February, 1886, before Honorable Walter Q. Gresham and Honorable William A. Woods, judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Come now the complainants, by their solicitors, and the purchaser of said railroad and property, by his solicitors, and shows to the court that heretofore, to wit, on November 12th, 1885, final decree of foreclosure and sale was rendered and entered in this cause in this court; that by said decree William P. Fishback and John McNulta were appointed special masters to sell said railroad and property in accordance with the terms, conditions, and notice prescribed in said decree; that afterwards, to wit, on the 30th day of December, A. D. 1885, the said masters, William P. Fishback and John McNulta, did sell said railroad and property in obedience to and in performance of the terms and conditions of said decree, and filed in this court their written report of such sale and their proceedings as such special masters under said decree; which said report is on file and of record in this court, to which reference is hereby made, and that more than 30 days have elapsed since the filing of said report of sale, and no exceptions thereto have been filed in said cause.

And thereupon, on motion, it is ordered, adjudged, and decreed by the court that the said sale of the said railway and property in said decree, notice of sale, and report of said sale mentioned and described be, and the same is hereby, in all things approved and confirmed by the court.

It is further ordered, adjudged, and decreed that upon the performance by the purchaser at said sale of the terms and con-

94 ditions in that behalf in said decree provided he shall be

entitled to have and receive a good and sufficient deed of conveyance conveying to him said railroad and property by the said description in said final decree and notice of sale contained and set forth.

And it is further ordered, adjudged, and decreed that the Central Trust Company of New York and the Toledo, Cincinnati & St. Louis Railroad Company be, and they are hereby, required to join in the conveyance of said railroad and property whenever the said deed of conveyance shall be ordered — executed and delivered by the further order of this court.

And it is further ordered, adjudged, and decreed that the Farmers' Loan and Trust Company of New York be, and it is hereby, required, upon due and full performance of the terms and conditions of said final decree with respect to the payment of the bonds secured by a first mortgage upon the Frankfort and Kokomo railroad, extending from Frankfort, Indiana, to Kokomo, Indiana, as in said final decree stipulated and provided, in *in* which said mortgage or trust deed said Farmers' Loan and Trust Company of New York is trustee, to assign said mortgage or trust deed, without recourse, to the said purchaser at said sale under said final decree as aforesaid; and this cause is continued for further proceedings in accordance with the terms and stipulations of said final decree.

95 And afterwards, to wit, at the November, 1885, term of said court, on the 10th day of March, 1886, before Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled causes were had, to wit:

Now, on this day, come the special masters, William P. Fishback and John McNulta, appointed herein, and present to the court a certain deed, a copy of which is hereto annexed (and the same shall be spread of record in connection with this order and decree), made by them in accordance with the decree entered in the above-entitled cause, in and by which they, the said masters, convey all the property and franchises which were of the Toledo, Delphos and Burlington Railroad Company and of the St. Louis Division of the Toledo, Cincinnati and St. Louis Railroad Company to Sylvester H. Kneeland, the purchaser thereof, and ask that the said deed be by the court affirmed.

And the court, being fully advised in the premises, does hereby confirm the said deed and the acts of the said masters in that behalf, and the said masters are hereby ordered to deliver the said deed to the said Sylvester H. Kneeland.

And it is further ordered that said deed is confirmed and delivered with the express understanding that the court shall have and retain full power and authority to retake possession of said property or any part thereof if the said grantee shall fail to pay the full purchase-money according to the terms of the decrees of sale; and that in case any appeal is taken from any decree for the payment of money by said grantee and supersedeas bond be given, the amount secured by such bond shall be considered as a part of the purchase-money, to

enforce the payment of which the court may retake said property or any part thereof.

96 It is further ordered that the Central Trust Company of New York and the Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois, parties hereto, make, execute, and deliver to said Sylvester H. Kneeland a deed to all of said property and franchises embraced in the mortgages foreclosed in the above causes in accordance with the decrees heretofore made in that behalf.

And it is further ordered that the said John McNulta, receiver herein, deliver immediate possession to said Sylvester H. Kneeland or to his agent, James M. Quigley, of all of the said property mentioned in the said deed, and that the said receiver without delay proceed to pay the supply and labor claims now due under his administration and turn over to the clerk of this court any money that may be in his hands, together with the certificate of stock of the Frankfort and State Line Railroad Company, amounting to the sum of $1,800,000, par value; and, further, that he make, as soon as practicable, his final report as such receiver; and that, subject to the further order of this court, the said receiver turn over to the clerk of the U. S. court at Toledo, Ohio, all books, papers, and vouchers that may be in his possession or control relating in any way to the receivership herein, including those received from his predecessor.

It is further ordered that the clerk of this court do forthwith send to the clerks of the circuit courts of the United States for the northern district of Ohio, western division, and the southern district of Illinois certified copies of this order and decree with copies of deed attached.

Master's Deed.

Toledo, Cincinnati & St. Louis R. R., William P. Fishback and John McNulta, special masters,
to
Sylvester H. Kneeland.

97 This deed of conveyance, made this tenth day of March, A. D. 1886, by William P. Fishback and John McNulta, special masters of the circuit court of the United States for the district of Indiana, the southern district of Illinois, and the northern district of Ohio, western division, grantors, to Sylvester H. Kneeland, grantee, witnesseth:

That heretofore, in June, 1884, there were filed in the circuit court of the United States for the district of Indiana and the district of Illinois respectively bills of complaint in chancery, wherein The Central Trust Company of New York, Edward F. Leonard, James M. Quigley, and others were complainants and The Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants, and that heretofore, in October, 1883, there were filed in the circuit court of the United States for the district of Indiana and the northern district of Ohio, western division, bills of complaint in chancery, wherein The Central Trust Company of New

York, James M. Quigley, and others were plaintiffs and The Toledo, Delphos & Burlington Railroad Company, The Toledo, Cincinnati & St. Louis Railroad Company, and others were defendants, the object and prayer of which said bills of complaint so filed in the United States circuit court for the district of Indiana and the southern district of Illinois was the foreclosure of certain mortgages and trust deeds executed by the said Toledo, Cincinnati and St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, and the object and prayer of which said bills of complaint so filed in the circuit court of the United States for the district of Indiana and the northern district of Ohio, western division, was the foreclosure of cer-
98 tain mortgages and trust deeds executed by the said The Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, trustee.

Whereas such proceedings were had in said causes that afterwards, on the 12th day of November, 1885, said causes so pending in the circuit court of the United States for the district of Indiana coming on to be heard, having been set down for hearing on the bills of complaint filed in said causes and the several answers thereto and other pleadings filed in said causes and the exhibits and testimony, upon which the court, being fully advised, did find the equity of the causes in favor of said complainants named in the bills of complaint mentioned, and, among other things, did then and there order, adjudge, and decree that the premises, real and personal, property, rights, and franchises named in said decree, to wit:

All and singular the line of railroad between a connection with the Toledo, Delphos and Burlington railroad in the city of Kokomo, Howard county, in the State of Indiana, and extending thence through the counties of Howard, Clinton, Tippecanoe, Montgomery, Fountain, Parke, and Vermillion, in the State of Indiana, and Vermillion, Edgar, Douglas, Coles, Cumberland, Shelby, Fayette, Bond, Madison, Montgomery, and St. Clair, in the State of Illinois, to the city of East St. Louis, in St. Clair county, Illinois, being about two hundred and seventy miles in length, together with all and singular the rights of way, road-bed, and track laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, machine-shops, buildings, and erections in anyway appertaining unto said line of described railroad between said points, together with all machinery,
99 supplies, tools, and fixtures owned by the said Toledo, Cincinnati and St. Louis Railroad Company for use in connection with the line of railroad aforesaid between said points, and all the depot grounds, yards, sidings, turnouts, sheds, machine shops, and leasehold rights in connection with said line of railroad between said points, together with all and singular the powers and franchises thereto belonging, and the tolls, income, and revenue to be received or derived therefrom, being the property described in the mortgage and trust deeds executed by the Toledo, Cincinnati and St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, and commonly known as the St.

Louis Division of the Toledo, Cincinnati and St. Louis railroad, and also the following property, viz:

All and singular the line of railroad of the said Toledo, Delphos and Burlington railroad from Toledo, Lucas county, Ohio, through the counties of Lucas, Wood, Henry, Putnam, Allen, and Van Wert, in the State of Ohio, and the counties of Adams, Wells, Huntington, Wabash, Miami, Grant, and Howard, in the State of Indiana, to the city of Kokomo, Indiana, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed, and track between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, buildings, machine shops, and erections in any way appertaining unto said railroad, together with all engines, cars, machinery, supplies, tools, and fixtures held, owned, or acquired by the said railroad company for use in connection with the line of railroad aforesaid, and all depot grounds, yards, sidings, turn-
100 outs, sheds, machine shops, leasehold rights, and other terminal facilities owned by said railroad company, together with all and singular the powers and franchises belonging thereto, and the tolls, income, and revenue to be levied by and derived therefrom, being all and singular the railway property covered and conveyed by certain mortgages and deeds of trust executed and delivered by the Toledo, Delphos and Burlington Railroad Company on the 17th day of January, A. D. 1880, to the Central Trust Company of New York to secure certain bonds and interest warrants or coupons described in said deeds of trust and mortgages, including the rights of way thereof, the road-bed thereof, the superstructures of all sorts thereon, its water and other stations and shops, the lands and grounds connected therewith, the tools or equipments owned or provided to be used thereon and therein and in constructing and repairs to cars and machinery of said road or the track and the superstructures aforesaid, and all fixtures and superstructures of whatever name or nature, and the lands and grounds connected therewith used or provided to be used in operating said road, wherever situated, including all terminal facilities owned by the said Toledo, Delphos and Burlington Railroad Company at the date of the execution of the said trust deeds and mortgages to said Central Trust Company of New York or thereafter owned or acquired by said Toledo, Delphos and Burlington Railroad Company or by its successor by consolidation, the Toledo, Cincinnati and St. Louis Railroad Company, and provided to be used in the operation of said railroad, and all cars, engines, and rolling stock belonging to said Toledo, Delphos and Burlington Railroad Company or the Toledo, Cincinnati and St. Louis Railroad Company or either of them, and all supplies and other things provided by the said railroad companies last named or either
101 of them or by the receivers appointed by the order of this court to be used in operating said railroad, together with all corporate franchises of saod railroad companies last named and each and every of the original constituent companies entering into the various consolidations forming the said Toledo, Delphos and Burlington Railroad Company and its successor, the said Toledo, Cin-

cinnati and St. Louis Railroad Company, including the rights and franchises of said several companies, being the property and premises described in the mortgages and deeds of trust executed by the said Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, trustee, including the property thereafter acquired, in accordance with the terms of said mortgages and trust deeds, and being commonly known as the Toledo Division of the Toledo, Cincinnati and St. Louis railroad, should be sold at public auction as an entirety by the special masters above named at the door of the United States circuit court room, in the city of Indianapolis, Marion county, Indiana;

And whereas said decree did further provide that before making said sale of the premises and property hereinbefore first above described, namely, the property covered by the mortgages and deeds of trust to the Central Trust Company of New York and Thomas A. Hendricks, trustee, commonly known as the St. Louis Division of the Toledo, Cincinnati and St. Louis railroad, said special masters should give previous notice of the time, place, and terms thereof by advertisement in one newspaper published in the city of New York, State of New York; one in the city of Boston, Massachusetts; one in the city of Indianapolis, Indiana, and one in the city of Spring-
102 field, Illinois, once each week for four consecutive weeks, the first of which publications was to be not less than thirty days before the day of sale, which decree further provides that said property should be sold at public auction to the highest bidder as an entirety, without relief from valuation or appraisement laws and free from all right of redemption, for the sum of not less than nine hundred thousand dollars;

And whereas by the decree in said cause wherein The Central Trust Company of New York and others were complainants and The Toledo, Delphos and Burlington Railroad Company of Ohio and Indiana and The Toledo, Cincinnati and St. Louis Railroad Company of Ohio, Indiana, and Illinois and others were defendants it was ordered, adjudged, and decreed that the railroad premises and property herein described covered by the mortgages and trust deeds executed by the Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, being known as the Toledo Division of said Toledo, Cincinnati & St. Louis railroad, should be sold at public auction as an entirety by said special masters without appraisement, without reference, and not subject to the law or laws of the States of Indiana, Illinois, and Ohio touching rights of redemption from mortgage sales; which said decree further provided that the said special masters before offering said property, franchises, and premises for sale should advertise the time, place, and terms of such sale, together with a general description of such property, in one newspaper published in the city of New York, in the State of New York; one published in the city of Boston, Massachusetts; one published in the city of Toledo, in the State of Ohio; one published in the city of Indianapolis, in the State of Indiana, and one published in the city of Springfield, in the State of
103 Illinois, once each week for four consecutive weeks, the first

insertion of which advertisement and notice was to be not less than thirty days before the day of sale;

And whereas it appeared to said court that concurrent proceedings for the foreclosure of said mortgages and trust deeds executed by the said Toledo, Cincinnati and St. Louis Railroad Company to the Central Trust Company of New York and Thomas A. Hendricks, trustees, were pending in the southern district of Illinois, and that like concurrent proceedings for the foreclosure of said mortgages and trust deeds executed by the Toledo, Delphos and Burlington Railroad Company to the Central Trust Company of New York, trustee, were pending in the circuit court of the United States for the northern district of Ohio, western division, in which said proceedings respectively ancillary or concurrent decrees had been entered confirming the appointment of said William P. Fishback and John McNulta special masters to make said sales in accordance with the terms of the decrees so entered in said causes in the circuit court of the United States for the district of Indiana;

And whereas afterwards, in conformity with the said several decrees, upon the precipes of the solicitors for the said Central Trust Company of New York and Thomas A. Hendricks, trustees, as provided in each of said decrees, certified copies of said decrees and orders of sale did issue under the seals of said courts respectively and directed to the said special masters, as by said decrees required, commanding the execution of the decrees aforesaid, under which orders of sale said special masters gave notice by publication, as required by said decrees, that they would on Wednesday, December
30th, 1885, at the door of the United States circuit court
104 room, in the city of Indianapolis, Marion county, Indiana, at 12 o'clock noon of said day, offer for sale at public auction to the highest bidder conforming to the conditions of said decree, the premises, real and personal property, rights, and franchises so ordered to be sold according to the directions and terms and subject to the conditions prescribed by said decree;

And whereas on said day, at said time, in pursuance of said notices given by said publication as required by said decrees, said special masters offered said premises and real and personal property, rights, and franchises for sale at public auction to the highest bidder as aforesaid, and thereupon Sylvester H. Kneeland, having complied with and conformed to all the conditions, provisions, and requirements of said decrees for the sale of the property hereinbefore described and designated as the Toledo Division of said Toledo, Cincinnati and St. Louis Railroad Company, did offer and bid the sum of six hundred thousand dollars, the same being the minimum sum required by said decree, and, he being the highest and best bidder therefor and no person offering to bid any larger sum, the said special masters thereupon struck off and sold the same to the said Sylvester H. Kneeland;

And whereas on the same day, at the same time, in pursuance of said notice given by said publication as required by said decree, the said special masters offered said premises and all real and personal property, rights, and franchises for sale at public auction to the

highest bidder as aforesaid, namely, the railroad property hereinbefore described and designated as the St. Louis Division of said Toledo, Cincinnati and St. Louis railroad, and thereupon the said
Sylvester H. Kneeland, having complied with and conformed
105 to all the conditions, provisions, and requirements of said
decree to enable him to bid for the same, did offer and bid for said property the sum of nine hundred and one thousand dollars, the same being more than the minimum sum required by said decree, and, he being the highest and best bidder therefor, the said special masters thereupon struck off and sold the same to the said Sylvester H. Kneeland;

And thereupon said special masters filed their report of sale of said Toledo Division in the said circuit court of the United States for the district of Indiana and the circuit court of the United States for the northern district of Ohio, western division, respectively, and did also file their report of said sale of said railroad property known as the St. Louis Division in said circuit court of the United States for the district of Indiana, all of which said reports of sale show that said notices had been duly given and said sales made as aforesaid; and by said reports it further appeared that said bidder, before making said bids and in conformity with the terms of said decrees, had deposited with said special masters the sums of money to be deposited by the terms of said decrees;

And whereas afterwards, in the said circuit court of the United States for the district of Indiana, there were respectively entered decrees in said causes approving said reports therein respectively filed and confirming all the proceedings of said special masters in making said sales and confirming the sales of said premises, and thereupon the clerk of said circuit court of the United States for the district of Indiana sent certified copies of said decrees of confirmation to the clerk of the United States circuit court for the southern district of Illinois and the northern district of Ohio, western division, respectively;

106 And whereas afterwards it was ordered and decreed by the said circuit court of the United States for the district of Indiana that the said special masters should execute and deliver to said Sylvester H. Kneeland their deed of conveyance in proper form, to be approved by said circuit court of the United States for the district of Indiana, conveying to said Sylvester H. Kneeland in fee simple all and singular the said premises, real and personal property, rights, and franchises so sold to him as aforesaid;

And whereas said purchaser, Sylvester H. Kneeland, has complied with the terms of the orders of said court in that behalf by paying and securing the payment of the purchase-money and has in all respects complied with the terms of sale as set forth in said decrees and in said notices of publication, all of which will more fully and at large appear, reference being had to the records of the proceedings in said causes in said circuit courts of the United States for the district of Indiana, the southern district of Illinois, and the northern district of Ohio, western division, all of which records are referred to and made a part of this deed:

Now, therefore, in conformity with said decrees, we, William P. Fishback and John McNulta, special masters as aforesaid, do hereby bargain, sell, and convey unto the said Sylvester H. Kneeland and to his heirs and assigns forever all of the premises, real and personal property, rights, and franchises hereinbefore described as fully and completely as we may lawfully do under the authority aforesaid, free, clear, and discharged of all right, authority, and interest, claim, lien, and equity of redemption in or to the premises, real and personal property, rights, and franchises so sold and hereby con-
107 veyed and every or any part thereof of each and every of the defendants to said suits respectively and of all the persons claiming or to claim under them or any of them.

It is hereby stipulated that the court shall have, and hereby does reserve, full power and jurisdiction, upon the default of the said Sylvester H. Kneeland to comply with any order of the court respecting payment of the purchase-money, to retake possession of said property and forthwith sell the same or any part thereof upon order of the court to that effect entered; and the said grantee further stipulates that he and his assigns will forthwith yield possession of said railroad and property upon such order of the court entered on his default in the payment of the purchase-money or any part thereof, as required by said decrees; and, further, that all money becoming due on appeals to the Supreme Court shall be deemed to be purchase-money, notwithstanding said decrees may have been superseded pending such appeal

In witness whereof we have set our hands and seals hereunto, and we do now deliver this deed of conveyance, this 10th day of March, one thousand eight hundred and eighty-six.

WILLIAM P. FISHBACK. [SEAL.]
JOHN McNULTA. [SEAL.]

STATE OF INDIANA, }
Marion County. }

Before me, the undersigned, a notary public within and for said Marion county and State of Indiana, personally came the above-named William P. Fishback and John McNulta and acknowledged the execution of the foregoing deed.

[SEAL.] Witness my hand and notarial seal this 10th day of March, A. D. 1886.

CHRIST. H. STEIN,
Notary Public.

108 And be it remembered that heretofore, to wit, at the November term of said court, on the 21st day of December, 1885, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

It is now ordered by the court that all claims filed in the above-entitled cause after the 5th day of November, 1885, on which day A. J. Ricks, Esq., was appointed special master herein by order of this court, be, and the same are hereby, referred to said special

master, A. J. Ricks, and are to be deemed and considered as falling under and being embraced in said order of reference to said A. J. Ricks, and any and all references heretofore made to any other master of any of said claims against said property, filed since said 5th day of November, 1885, are hereby revoked.

This order is made to the end that the said special master, A. J. Ricks, may have full power to take and state the accounts of the receivership of said property from the beginning thereof to the end thereof, as contemplated by the order of his appointment, and to the end that there be no double references of claims filed since the appointment of said Ricks special master as aforesaid.

Any and all claims heretofore filed in these causes or either of them and referred to Jacob D. Cox, as special master, prior to said 5th day of November, 1885, are to remain as so referred to said Cox, and are to be considered and reported upon by said master, Cox.

Any and all claims heretofore filed in this cause and referred to William P. Fishback, master, prior to said 5th day of No-
109 vember, 1885, shall be and remain as so referred to said Fishback, and are to be considered and reported upon by said Fishback—

The true intent and meaning of the said original order of appointment of November 5th, 1885, together with this modification thereof, being to give to said master, Ricks, full power and authority to take, investigate, and state the accounts of the receivership of said property from the beginning thereof, to wit, August 1st, 1883, down to the present time, and to take such testimony as may be by said master deemed necessary, and consider and report his findings, together with the evidence, upon the said accounts and the doings of the said receivership, and upon any and all claims filed in said cause subsequent to the said 5th day of November, A. D. 1885.

And afterwards, to wit, at the November term of said court, on the 30th day of December, 1885, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings in the above-entitled cause were had, to wit:

It is hereby ordered that the orders or reference to A. J. Ricks heretofore entered in this cause be, and the same are hereby, modified in this: That all claims filed or that may be filed in the U. S. circuit court for the district of Indiana against the property of said railway or the fund arising from the sale thereof be, and the same are hereby, referred to W. P. Fishback, master of this court.

110 And afterwards, to wit, at the May term of said court, on the 23rd day of July, A. D. 1886, before Honorable William A. Woods, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Now comes William P. Fishback, Esq., master in chancery, and files herein his third report on Frankfort and Kokomo bonds; which report is in the words following, to wit:

NEW YORK, *May 29th*, 1886.

S. NEWTON SMITH, being duly sworn, testified as follows:

By Col. INGERSOLL:

Q. Did you ever own any of the bonds known as the Frankfort and Kokomo bonds?
A. I own six of the bonds now.
Q. Do you know the numbers of your bonds?
A. I haven't the numbers with me. I could get the numbers from my brokers.
Q. Where are those bonds?
A. In Indianapolis.
Q. In whose possession?
A. The Indianapolis State Bank.
Q. When did you buy them, Mr. Smith?
A. I think it was in November, '85—the first part.
Q. Of whom did you buy them?
A. Of Ballou & Co.
Q. George William Ballou?
A. Yes, sir.
Q. What did you pay for these bonds?
A. I paid five thousand dollars ($5,000), or rather Lawrence Brothers did—charged to me in my account with them.
Q. Have you any memorandum by which you can fix the exact date?
111 A. Yes, sir; I think Lawrence Brothers can.
Q. Can you fix the exact numbers?
A. Lawrence Brothers & Co. can. I took no memorandum.
Q. Could you get it and send it here? If you can do so, that is all we care to ask—the numbers and date.

Statement of date of purchase and number of bonds is furnished by witness as follows:
Date of purchase, November 10th, 1885.
Numbers of bonds, 13, 26, 27, 88, 109, 135.

Witness then proceeded:

I knew nothing against the bonds whatever. I bought them in good faith. It will be a personal loss to me if they are lost.

NEW YORK, *May 29th*, 1886.

EDWARD LE CONTE, being duly sworn, testified as follows:

By Col. INGERSOLL:

Q. What is your name?
A. Edward Le Conte.
Q. Were you the owner of any bonds issued by the Frankfort and Kokomo Railroad Company?
A. Yes, sir.
Q. How many?
A. Three bonds, one thousand dollars each.

Q. What were the numbers of those bonds?
A. 88, 109, 135.
Q. What did you do with those bonds?
A. Mr. Ballou induced me to exchange them.
Q. To exchange them for what?
A. For three bonds of the Toledo, Cincinnati and St. Louis, numbers 454, 455, 457, of one thousand dollars each.
Q. What else?
112 A. Two income bonds; one $1,000, No. 985; one for $500, No. 657.
Q. Issued by the same company?
A. Yes, sir.
Q. Did he give you anything else?
A. Stock; 30 shares.
Q. Thirty shares of the common stock of the Toledo, Cincinnati and St. Louis?
A. Yes, sir.
Q. When was this?
A. The exact date?
Q. Near.
A. The latter part of August, 1882; I guess the 23d or 29th.
Q. How did you come to make the exchange? How did you come to go to George William Ballou?
A. I received a letter from that office that he wanted to see me about the Frankfort and Kokomo bonds. They were keeping back the interest, and I got anxious.
Q. Did he tell you that the bonds he gave you were better than those?
A. Yes, sir; he said I could never expect anything on my bonds; that they were doing nothing in business; their road was bigger and better road and interest would be paid; they had no road, and I need never expect to do anything with my bonds, but if I exchanged for their new security it would be all right; when first the interest was payable I could come to their office; it would be paid there. The time came and it was not paid.
Q. How many coupons had been paid on the Frankfort and Kokomo bonds?
113 A. I can't remember now.
Q. How did you come to get the numbers of these bonds?
A. Because I put them on my memorandum book.
Q. You put the numbers in your book?
A. Yes, sir.
Q. Have you got the book still—is it here?
A. Yes, sir.
Q. Was the memorandum in the book put down about the time you bought the bonds?
A. Yes, sir.
Q. When you bought the bonds did you put the numbers in the book?
A. Yes, sir.

Q. Did Mr. Ballou say anything as to the intention of getting possession of the Little Frankfort and Kokomo road?

A. Yes; he said they were going to take it; that they had a majority of the bonds, and that I had better take the bonds he offered. They needed it and, having a majority, were going to take it.

CYRUS J. LAWRENCE, being duly sworn, says that he is a member of the firm of Lawrence Brothers & Co., of the city of New York, engaged in business as bankers and stock brokers; that on the tenth day of November, 1885, acting as the agent and broker of S. Newton Smith and under his direction and authority, they paid for and received from Geo. W. Ballou & Co. six Frankfort & Kokomo R. R. first-mortgage bonds, numbered 13, 26, 27, 88, 109, 135, charging the five thousand dollars paid for said bonds to said S. Newton Smith's account with them, and Lawrence Brothers & Co.
114 still hold the said bonds as security for such payment, the aforesaid bonds belonging to him and being subject to his order upon his payment of the amount advanced for same as aforesaid, with interest and commission.

CYRUS J. LAWRENCE.

CITY AND COUNTY OF NEW YORK, }
State of New York. }

On this 19th day of July, 1886, personally appeared before me, a notary public for the city and county of New York, Cyrus J. Lawrence, to me known, and swore to the facts herein stated, and that the same were true.

WILLIAM HEARTT,
[SEAL.] *Notary Public, City and County of N. Y.*

In the Matter of the FRANKFORT AND KOKOMO RAILROAD'S COMPANY'S FIRST-MORTGAGE BONDS.

Claim of Lawrence Brothers.

To the honorable court:

The undersigned, William P. Fishback, the master in chancery herein to whom was referred the claims of persons holding or claiming to be the holders of bonds secured by the first mortgage of the Frankfort and Kokomo Railroad Company, respectfully reports to the court as follows:

Since my last report Lawrence Brothers & Co. have produced to me six bonds secured by said mortgage, numbered as follows: 13, 26, 27, 88, 109, 135, to each of which are attached coupon No. 8 and all subsequently maturing bonds.

I report and find that said bonds and coupons are owned by S. Newton Smith, but that they are held by Lawrence Brothers & Co., who produce them as collateral security for advances made by them on and for account of said Smith.

115 I report that the amount due upon said bonds is seven thousand eight hundred and eighty-three dollars and sixteen cents

($7,883.16), to which should be added one dollar and twenty-six cents ($1.26) per day from July 22nd, 1886, until they are paid.

I file herewith the evidence of S. Newton Smith and Edward Le Conte, taken in New York by agreement, and also the affidavit of Cyrus J. Lawrence.

The money to be paid on account of said bonds and coupons should be paid to George T. Porter, the attorney of Lawrence Brothers & Co., who are the holders of said bonds as above stated.

Respectfully submitted.

WILLIAM P. FISHBACK,
Master in Chancery.

And at the same time come Sylvester H. Kneeland and others and file their exceptions to the said third report of the master on Frankfort and Kokomo bonds in the words following, to wit:

116 *Exceptions to Report of Master. Filed July* 23, 1886.

Sylvester H. Kneeland, purchaser at foreclosure sale of the railroad and property, rights and franchises, involved in the above-entitled causes and trustee for the bondholders holding first-mortgage bonds secured by mortgage or trust deed upon said railroad and property so sold at foreclosure sale under decrees in said above-entitled causes, co-complainant in said above-entitled causes, come now and except to the report of master, William P. Fishback, filed herein on the 23rd day of July, A. D. 1886, touching the claim of Lawrence Brothers & Co. for Frankfort and Kokomo first-mortgage bonds, and for exception to said report said exceptors say:

1. That the master has by his report found and reported that Frankfort and Kokomo first-mortgage bonds numbered as follows, to wit, 13, 26, 27, 88, 109, & 135, together with the coupons thereunto attached, are owned by S. Newton Smith, and that they are held by Lawrence Brothers & Co, who produce them as collateral security for advances made by them, whereas the master should have found and reported that the bonds and coupons were not
117 owned by said S. Newton Smith and were not held by Lawrence Brothers & Co. as collateral security or in any other manner.

2. That the master has found and reported that the amount due upon said bonds is $7,883.16 and interest at the rate of $1.26 per day from July 22, 1886, until they are paid, whereas the said master should have found and reported that there is nothing due upon said bonds, and that the same have long since been surrendered to and paid by the T., C. & St. L. R. R. Co., and that the property is not subject to any lien on account of said bonds, and that the bonds are not a part of the 70 Frankfort and Kokomo first-mortgage bonds mentioned in the decree of foreclosure and sale in the above cause.

Wherefore exceptors pray that said report may be set aside and that the court enter its decree that said bonds ought not to be and shall not be paid under the terms of the decree of sale in the above cause or otherwise.

R. G. INGERSOLL.

118 And afterwards, to wit, at the May term of said court, on the 2nd day of October, 1886, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Sylvester H. Kneeland, purchaser and trustee, as in his exceptions hereinafter mentioned stated, by his solicitors, and come also Lawrence Brothers & Co., by George T. Porter, their solicitor, and the report of the master in chancery upon the claims of said Lawrence Brothers & Co., which report was filed on the 23rd day of July, 1886, and the exceptions of said Sylvester H. Kneeland to said report, which exceptions were filed on said 23rd day of July, 1886, are now, by agreement, submitted to the court for hearing and for final decree; and the court, having heard argument and being now fully advised, adjudges and decrees that said exceptions to said master's report be overruled and disallowed, and that said report of said master be and the same is in all things confirmed.

It is thereupon ordered by the court that the clerk of this court do pay to said Lawrence Brothers & Co. the amount of their said claim, as found by the master, in the sum of seven thousand eight hundred and eighty-three dollars and sixteen cents ($7,883.16), and the additional sum of $1.26 per day from July 22d, 1886, until paid, out of the funds in the registry of the court applicable thereto; and in default of there being sufficient funds therein to pay the same, said Sylvester H. Kneeland is hereby ordered to pay into court within three weeks from the date of this entry the amount of money found as aforesaid by the report of said master to be due and payable to said Lawrence Brothers & Co., to wit, $7,883.16, and the additional sum of $1.26 per day from July 22nd, 1886, until paid.

119 And afterwards, at the May term of said court, on the 1st day of November, 1886, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceeding- in said cause were had, to wit:

Comes now Sylvester H. Kneeland, the purchaser herein, by his solicitors, and prays an appeal to the Supreme Court of the United States from the order and decree of the court entered on the 2d day of October, 1886, upon the claim of Lawrence Brothers & Co.; which appeal is granted upon his filing an appeal bond in the penalty of $15,000.00, with surety to the approval of the court.

And afterwards, at the November term of said court, on the 29th day of November, 1886, before the Honorable William A. Woods, judge as aforesaid of said court, the following further proceedings in said cause were had, to wit:

In the Matter of the Claim of LAWRENCE BROTHERS & COMPANY.

Now comes Sylvester H. Kneeland and files his appeal bond in the penalty of $15,000.00, with the American Surety Company and David B. Sickels sureties; which bond is approved by
120 the court and is in the words following, to wit:

Know all men by these presents that we, Sylvester H. Kneeland and the American Surety Company of New York, are held and firmly bound unto Lawrence Brothers & Co. in the sum of fifteen thousand dollars, to be paid to said Lawrence Brothers & Co.; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors and administrators, successors or assigns, jointly by these presents.

Sealed with our seals and dated this 27th day of Nov'r, 1886.

Whereas the above-named Sylvester H. Kneeland hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is that if the above-named Sylvester H. Kneeland shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise in full force.

121 SYLVESTER H. KNEELAND. [SEAL.]
AMERICAN SURETY COMPANY,
[SEAL.] By RICH'D A. ELMER, *Pres't.*
DAVID B. SICKELS.

Sealed and delivered in presence of—
R. G. INGERSOL,
I. N. BAKER,
CH. W. HERMAN,
As to A. S. Co.

Taken and approved by me this 29th day of November, 1886.
WM. A. WOODS,
United States District Judge.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 27th day of November, 1886, before me personally appeared Richard A. Elmer, president of the American Surety Company, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that he is the president of the American Surety Company of New York; that he knew the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the board of directors of said company, and that he
122 signed said instrument as president of said company by like authority, and that the liabilities of said company do not exceed its assets, as ascertained in the manner provided in section 3, chapter 436, of the Session Laws of 1881.

And the said Richard A. Elmer further said that he is acquainted with David B. Sickels and knew him to be the secretary of said company; that the signature of the said David B. Sickels subscribed to the said instrument is in the genuine handwriting of the said David B. Sickels and was thereto subscribed by the like order of the said

board of directors and in the presence of him, the said Richard A. Elmer.

CH. W. HERMAN,
[SEAL.] *Notary Public of Kings County, New York.*

Certificate filed in New York county.

At a meeting of the board of directors of the American Surety Company held at the office of the company on the 9th day of June, 1886, on motion it was—

"Resolved, That in pursuance of chapter 416, Laws of 1886, amending section eight hundred and eleven of the Code of Civil
123 Procedure, the president or vice-president be, and either of them are hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for or on behalf of the company, the same to be attested by the secretary or assistant secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Fred. F. Nugent, assistant secretary of the American Surety Company, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

[L. S.] Given under my hand and the seal of the company, at the city of New York, this 27th day of November, 1886.

FRED. F. NUGENT,
Assistant Secretary.

124 UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the matter of the claim of Lawrence Brothers & Co. in the cause of The Central Trust Company of New York *et al. vs.* The Toledo, Cincinnati & St. Louis Railroad Company *et al.* as fully as the same appears of record and on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 8th day of October, A. D. 1887.

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 333. Sylvester H. Kneeland, appellant, *vs.* Lawrence Brothers & Co. Filed February 28, 1888.

APR 20 1891

SUPREME COURT
OF THE
UNITED STATES.

SYLVESTER H. KNEELAND,
Appellant,
vs.
LAWRENCE BROTHERS AND COMPANY,
Appellees.

No. 333.
October Term, 1890.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF IN BEHALF OF APPELLANT.

BY JOHN M. BUTLER.

FRANK H. SMITH, INDIANAPOLIS

board of directors and in the presence of him, the said Richard A. Elmer.

CH. W. HERMAN,
[SEAL.] *Notary Public of Kings County, New York.*

Certificate filed in New York county.

At a meeting of the board of directors of the American Surety Company held at the office of the company on the 9th day of June, 1886, on motion it was—

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CITY AND COUNTY OF NEW YORK, *ss:*

I, Fred. F. Nugent, assistant secretary of the American Surety Company, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at
[L. S.] the city of New York, this 27th day of November, 1886.

FRED. F. NUGENT,
Assistant Secretary.

124 UNITED STATES OF AMERICA, } *ss:*
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the matter of the claim of Lawrence Brothers & Co. in the cause of The Central Trust Company of New York *et al. vs.* The Toledo, Cincinnati & St. Louis Railroad Company *et al.* as fully as the same appears of record and on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 8th day of October, A. D. 1887.

NOBLE C. BUTLER, *Clerk.*

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In the Supreme Court, U. S.
FILED,
APR 20 1891
JAMES H. MCKENNEY

SUPREME COURT

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SYLVESTER H. KNEELAND,
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BRIEF IN BEHALF OF APPELLANT.

STATEMENT.

This suit pertains wholly to that part of the line of railroad extending from Toledo, Ohio, to East St. Louis, Illinois, known as the St. Louis Division. The St. Louis Division extends from Kokomo, Indiana, to East St. Louis, Illinois, a distance of two hundred and seventy miles.

That part of this division extending from Kokomo, Indiana, to Frankfort, Indiana, a distance of about twenty-five miles, was originally a standard gauge railroad, constructed and owned by the Frankfort and Kokomo Railroad Company.

On January 1, 1879, the Frankfort and Kokomo Railroad Company executed and issued two hundred first mortgage bonds for $1000 each, payable on January 1, 1909, bearing interest at the rate of seven per cent., payable semi-annually, and to secure the payment of said bonds executed and delivered to the Farmers' Loan and Trust Company its mortgage or deed of trust upon its said railroad from Frankfort to Kokomo.

Afterwards, The Frankfort and Kokomo Railroad became, by consolidation, a part of the railroad of the Toledo, Cincinnati and St, Louis Railroad Company, of Indiana and Illinois.

The T. C. & St. L. R. R. Co., executed and issued three thousand first mortgage bonds for $1000 each, dated July 23, 1881, payable in gold coin on July 1, 1921, with interest at the rate of six per cent. payable semi-annually, and to secure the payment of said bonds, executed and delivered to The Central Trust Company of New York and Thomas A. Hendricks its first mortgage on its entire line of railroad extending from Kokomo, Indiana, to East St. Louis, Illinois.

The purpose was to take up the entire two hundred Frankfort and Kokomo first mortgage bonds, by exchanging T. C. & St. L. R. R. Co. first mortgage bonds for them. One hundred and thirty of the Frankfort and Kokomo bonds were exchanged,—seventy of said bonds were not exchanged, the holders thereof refusing to exchange them for T. C. & St. L. R. R. Co. bonds.

Suit was brought for foreclosure of the first mortgage of the T. C. & St. L. R. R. Co., default having been made in payment of interest on said mortgage

bonds, and also in payment of interest on the outstanding bonds of the F. & K. R. R. Co.

Foreclosure decree was rendered on November 12, 1885. By this decree it was found and decreed that seventy of the F. & K. R. R. Co. bonds were outstanding and unexchanged, and that there was then due upon said seventy bonds and coupons thereto belonging, $85.108.12. (Record p. 19.)

In printing the record, at folio 50 on page 19, the part of the sentence showing that 130 of the 200 F. & K. R. R. Co. bonds had been exchanged and surrendered, is by mistake omitted. The sentence should have been printed as follows:

"That on or before the commencement of this suit, 130 of the said bonds *were taken up and cancelled by the exchange therefor of that number of bonds* of the said Toledo, Cincinnati and St. Louis Railroad Company of Indiana and Illinois, hereinafter mentioned, and the remainder thereof, to-wit, seventy, are outstanding in the hands of divers holders." The words in italics are omitted from this record.

This same decree, however, appears correctly in the record in cause No. 252, October Term, 1889,—*Kneeland* v. *American Loan and Trust Company*, at pages 471, 472.

By the foreclosure decree it was provided that the seventy unexchanged F. & K. R. R. Co. bonds and defaulted coupons should be paid out of the proceeds of the foreclosure sale, first after payment of Court costs and Master's fees. (Record p. 28.)

The foreclosure sale took place on December 30, 1885, and Sylvester H. Kneeland became the purchaser of the entire road from Kokomo to East St. Louis for $901,000. (Record pp. 29–34.)

The sale was confirmed February 5, 1886, and on March 10, 1886, a deed was executed and delivered to Kneeland. (Record pp. 34-42.)

Under a general order, all claims filed in the United States Circuit Court for the District of Indiana against the purchase money fund, arising from the foreclosure sale of the T., C. & St. L. R. R., were referred to W. P. Fishback, Master. (Record p. 43.)

Appellees, as brokers for one S. Newton Smith, filed a claim for payment of six F. & K. R. R. Co. bonds, alleging that they, as brokers, had purchased the six bonds on the order of said Smith, and that said bonds were held by them as collateral, to secure repayment of $5000, advanced by them for Smith on the purchase of the bonds.

From the numbers on the bonds produced by appellees, Kneeland became satisfied that *they were bonds that had been exchanged*, and that they formed no part of the seventy F. & K. R. R. Co. bonds, payment of which was provided in and by the foreclosure decree under which he purchased. He, therefore, resisted payment of these six bonds, and required proof regarding them to be taken.

It will be remembered that the fact has been repeatedly disclosed in the records of the various cases appealed to this Court by Mr. Kneeland, that from the commencement to the disastrous conclusion of this narrow-gauge railroad enterprise, George William Ballou & Company were the financial agents of the Toledo, Delphos and Burlington Railroad Company, and its successor, the Toledo, Cincinnati and St. Louis Railroad Company.

This fact notably appears in the records of the

causes of *Central Trust Company of New York, et al.*, v. *Sylvester H. Kneeland*, decided during the present term of this Court, and *Toledo, Delphos and Burlington Railroad Company* v. *Hamilton*, decided by this Court, March 17, 1890.

The evidence taken, regarding the six bonds here involved, appears in the record. It proves conclusively the following facts:

1. These six bonds were purchased on November 10, 1885, *from George William Ballou & Company.* (Record pp. 44, 46.)

2. That three of these bonds, to-wit, numbers 88, 109 and 135, *were exchanged* by Edward LeConte for bonds and stock of the T., C. & St. L. R. R. Co. *in August, 1882*, and were by LeConte *surrendered* to Ballou *as bonds fully paid and discharged.* (Record p. 45.)

3. That all of the six bonds were purchased from George William Ballou & Company *at the same time*,—the said Ballou & Company being then, and at all times, the financial agents of the T. C. & St. L. R. R. Co. (Record p. 46.)

The Master reported in favor of appellees, finding the amount due on the six bonds, on July 22, 1886, to be $7,883.16, and that $1.26 should be added to that amount, as interest, for each day thereafter, until the bonds are paid. (Record pp. 46, 47.)

Kneeland filed exceptions to this report. (Record p. 47.)

The Court overruled the exceptions, confirmed the Master's report and rendered decree accordingly. (Record p. 48.)

From this decree, Kneeland appealed.

ASSIGNMENT OF ERRORS.

1. *The Circuit Court erred in overruling the exceptions to the Master's report.*

2. *The Circuit Conrt erred in rendering the decree in favor of appellees for $7,883.16, and the additional sum of $1.26 per day, from July 22, 1886, until paid.*

ARGUMENT.

It is absolutely certain that three of the F. & K. R. R. Co. bonds, included in this claim and decree, to-wit, bonds numbered 88, 109 and 135, were in fact *exchanged* for securities of the T. C. & St. L. R. R. Co., *in August, 1882*, and were *surrendered* to the financial agent of the last named company for cancellation, *as bonds fully paid and discharged.*

These three bonds very surely constituted no part of the seventy F. & K. R. R. Co. bonds, payment of which was provided for in and by the foreclosure decree, under which Kneeland purchased.

From the evidence, the inference is almost, if not quite, irresistible that the other three bonds included in this claim, to-wit, bonds numbered 13, 26 and 27, were also exchanged for bonds and securities of the T., C. & St. L. R. R. Co., and were surrendered to George William Ballou & Company, as the financial agent of the T., C. & St. L. R. R. Co., for cancellation as bonds fully paid and discharged.

This inference is strengthened to certainty beyond a reasonable doubt, when it is remembered that this evidence was taken in New York City, within a stone's throw of the office of George William Ballou, and that he was not called upon to explain the transaction by which appellees claim to have purchased the six bonds

for Smith. It is also a notable and very suspicious fact that Cyrus J. Lawrence does *not* state that he knew of no infirmity attaching to these bonds when purchased by Ballou.

If F. & K. R. R. Co. bonds, not constituting a part of the seventy bonds, payment of which was provided for by the foreclosure decree, are paid out of the proceeds of that foreclosure sale, it is very evident that appellant, Sylvester H. Kneeland, and the bondholders of the T., C. & St. L. R. R. Co., represented by him, *will lose exactly the amount of money paid upon these bonds which were exchanged*, and were fraudulently sold and reissued after having been paid in full with the mortgage bonds of the T., C. & St. L. R. R. Co.

The decree appealed from holds these six bonds to to be a valid and prior lien on the proceeds of the foreclosure sale of the T., C. & St. L. R. R.

Appellant, Kneeland, contends, on the contrary, that, these bonds having been *paid* by surrendering and exchanging them for bonds and securities of the T., C. & St. L. R. R. Co., *the lien of the F. & K. R. R. Co. mortgage was thereby released and fully discharged.*

In this case the T., C. & St. L. R. R. Co., by the agreement of consolidation, assumed payment of the F. & K. R. R. Co. mortgage, and hence the T., C. & St. L. R. R. Co. *became bound to pay these bonds.*

The law is that *payment*, in any way, or by any thing that is accepted as payment, *by the party bound to make payment*, operates as a full discharge of the debt, *and releases the mortgaged property from the lien of that debt.*

The following authorities seem to very clearly support this contention of appellant, Kneeland:

Jones on Mortgages, Secs. 864, 865 and 944.
Daniel on Negotiable Instruments, Sec. 1221.
Carlton v. *Jackson*, 121 Mass. 592.
Ledyard v. *Chapin*, 6 Ind. 320.
Fewell v. *Kessler*, 30 Ind. 195.
Merrill v. *Chase*, 3 Allen (Mass.) 339.
Blake v. *Broughton*, 12 S. E. Rep. 127.
Theisen v. *Dayton*, 47 N. W. Rep. 891.
Thompson's Adm'r. v. *George*, 86 Ky. 311; S. C. 5 S. W. Rep. 760.
Davis v. *Bechstein*, 69 N. Y. 440.
District of Columbia v. *Cornell*, 130 U. S. 655.
McMurray v. *Moran*, 134 U. S. 150.

Under the evidence it would be extremely hard, if not utterly impossible, to believe that these appellees had no knowledge or suspicion that these bonds had been exchanged, and new bonds of the T. C. & St. L. R. R. Co., issued in their stead, when they purchased them.

Of course, Smith may well, and undoubtedly does truly, testify that "he knew nothing against the bonds whatever," and that he "bought them in good faith"; but could *these appellees* testify to the same? If so, why did they very carefully refrain from so doing? It was, and had been for years, a well known fact that George William Ballou & Company were the recognized financial agents of the T. C. & St. L. R. R. Co., and were marketing its securities and making such payments and exchanges as were necessary to make them what they purported to be,—*first liens on the property*.

These appellees were New York brokers, and without doubt well understood the situation. Smith is, in

law, chargeable with the knowledge possessed by his brokers, these appellees; and whether he is or is not so chargeable, makes no difference, because he is not a party to this suit.

This suit was brought by Lawrence Bros. & Company, in their own behalf. Upon their showing it seems reasonably clear that they are *not* entitled to the position of *bona fide* purchasers without knowledge of the infirmity attaching to these bonds, by reason of their having been exchanged, paid and surrendered as fully satisfied and discharged.

But under the view above taken, and supported by authority, it may be wholly immaterial to decide the question of *bona fides* or *mala fides*. The point appellant, Kneeland, contends for is, that the *payment* of these bonds, by accepting other bonds and securities in exchange for them, *released and forever discharged the lien of the F. & K. R. R. Co. mortgage upon the property,—in so far as the exchanged bonds are concerned.*

The authorities above cited seem to fully sustain this proposition. In this view of the case, it is quite immaterial to determine whether bonds, wrongfully reissued, after having been exchanged and surrendered as paid, are or are not valid as obligations of the corporation originally issuing them. The only question of interest to appellant, Kneeland, is: *Has the lien of the F. & K. R. R. Co. mortgage,—as to bonds surrendered and exchanged for T., C. & St. L. R. R. Co. mortgage bonds,—been released and discharged?*

Upon both reason and authority, appellant, Kneeland, contends that *the lien of the F. & K. R. R. Co. mortgage,*—as to these six bonds, or as to each and every

one of them found to have been actually surrendered and exchanged for T., C. & St. L. R. R. Co. mortgage bonds,—*is released and forever discharged.*

Appellant therefore asks that the decree appealed from may be reversed.

Respectfully Submitted,

JOHN M. BUTLER,
Of Counsel for Appellant.

Indianapolis, Ind., April 17, 1891.

Office Supreme Court U. S.
FILED,
APR 20 1891
JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

No. 333.

SYLVESTER H. KNEELAND, APPELLANT,

vs.

LAWRENCE BROTHERS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR THE APPELLEES.

The Frankfort and Kokomo railroad was a railroad about twenty-five miles in length in the State of Indiana. The company had executed a mortgage upon its property to secure an issue of 200 bonds of $1,000 each. Subsequently the road became a link in the longer Toledo, Cincinnati and St. Louis railroad. The latter company issued its 3,000 mortgage bonds of $1,000 each, and of the issue there were set aside to trustees 200, to be retained by them, and to be exchanged at par value, for Frankfort and Kokomo bonds, at par value, with such persons as should present such Frankfort and Kokomo bonds. One hundred and thirty

were so exchanged; the other Frankfort and Kokomo bonds were in the hands of divers holders, and were not exchanged (Tr., p. 19, sec. 50).

The suit, of which this case is an incident, was a suit to foreclose the Toledo, Cincinnati and St. Louis mortgage, and a decree of foreclosure was rendered. The decree found how much was due to holders of Frankfort and Kokomo bonds, and directed that this sum should be paid out of the proceeds of the sale of the Toledo, Cincinnati and St. Louis railroad, next after payment of court costs and master's fees (Tr., p. 28).

The Toledo, Cincinnati and St. Louis railroad was sold. Upon a reference to the master, he reported that the appellees herein had presented six Frankfort and Kokomo bonds (numbers given), with coupons attached; that the bonds were owned by Smith and were held by Lawrence Bros. & Co., as collateral security for advances made, and reported how much was due upon the bonds (Tr., p. 46).

Exceptions were filed to this report by the appellant, the purchaser of the Toledo, Cincinnati and St. Louis railroad (Tr., p. 47). The exceptions were overruled and judgment was given for the appellees (Tr., p. 48).

No brief has been filed for the appellant and I am not advised what points are relied upon for a reversal; but the evidence taken by the appellant at New York and filed with the master's report (Tr., pp. 44, 45) would seem to indicate an intention to assert that the appellees were not *bona fide* purchasers for value of the bonds upon which a judgment was given.

Of the 3,000 bonds of $1,000 each, issued by the Toledo,

Cincinnati and St. Louis Railroad Company, 200 were issued and delivered to the Central Trust Company and Hendricks, trustees, to be retained by them and to be delivered in such sums as might from time to time be required, at par value, to such persons as should present for exchange at par value Frankfort and Kokomo bonds (Tr., p. 3). What numbers these Toledo, Cincinnati and St. Louis bonds bore does not appear.

There is no evidence that any of the bonds held by the appellees were exchanged for any of the Toledo, Cincinnati and St. Louis bonds entrusted to the Central Trust Company and Hendricks; for whereas the trustees were to retain these 200 Toledo, Cincinnati and St. Louis bonds and were to exchange them at par for Frankfort and Kokomo bonds, the bonds held by the appellees were obtained by Smith from one Ballou. Where Ballou had obtained numbers 13, 26, and 27 of the Frankfort and Kokomo bonds does not appear. The other three he had got from one Le Conte, and had given Le Conte for them three Toledo, Cincinnati and St. Louis bonds (Nos. 454, 455, 457, of $1,000 each), two income bonds ($1,000 and $500), and thirty shares of common stock. (Tr., p. 45.)

The bonds were purchased by Smith from one having possession of them, and were purchased in good faith (Tr., p. 44). There is nothing upon which to found an assumption that Ballou was not the owner of the bonds. Smith gave Ballou for them (six bonds of $1,000 each) $5,000. It was not necessary, to make him a purchaser in good faith and for value, that he should have given the par value.

GEORGE T. PORTER,
Counsel for Appellees.